

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TROOPER 1, : 22-CV-00893 (LDH) (TAM)

Plaintiff, :

-against- :

United States Courthouse  
Brooklyn, New York

January 11, 2024  
2:00 p.m.

NEW YORK STATE POLICE, et  
al., :

Defendants. :

- - - - - X

ANDREW CUOMO, :

Plaintiff, :

23-MC-1587 (LDH) (TAM)

-against- :

Defendants. :

LINDSEY BOYLAN, :

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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE TARYN A. MERKL  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff  
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1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: Civil cause for a status conference,  
3 case number 22-cv-893, Trooper 1 versus New York State Police,  
4 et al. and case number 23-mc-1587, Cuomo versus Boylan.

5 Will the parties state their appearances, starting  
6 with the plaintiff.

7 MR. LICUL: Good morning, Your Honor. Valdi Licul  
8 and John Crain, Wigdor, LLP for the plaintiff.

9 THE COURT: Good afternoon.

10 MR. GLAVIN: Good morning, Your Honor. Rita Glavin,  
11 Glavin, PLLC for former Governor Andrew M. Cuomo.

12 MS. TRZASKOMA: Good morning, Your Honor. Theresa  
13 Trzaskoma from Sher Tremonte, LLP on behalf of former Governor  
14 Andrew M. Cuomo.

15 MS. NOONAN: Good afternoon, Your Honor. Allegra  
16 Noonan from Scher Tremonte, LLP on behalf of Governor Cuomo.

17 THE COURT: Good afternoon.

18 MS. CASSIDY: Good afternoon, Your Honor. On behalf  
19 of Melissa DeRosa and Richard Azzopardi, you have Kathleen  
20 Cassidy and Kayasha Lyons from Morvillo Abramovitz.

21 THE COURT: Good afternoon.

22 MR. PALERMO: Good afternoon, Your Honor. Daniel  
23 Palermo, Harris Beach on behalf of the New York State Police.

24 THE COURT: Good afternoon.

25 And we also are here, as the parties know, for the

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1 first session of our two-part session. This afternoon is  
2 concerning the issues pertaining to the deposition and  
3 document requests related to Lindsey Boylan.

4 Are Lindsey Boylan's counsel here?

5 MS. PERRY: Yes, Your Honor. Good afternoon. Dayna  
6 Perry from Perry Law, with my associate Krista Oehlke. I'm  
7 sorry, and my co-counsel Julie Gerchik is on the phone.

8 THE COURT: That's what I wanted to confirm. So  
9 she's on the phone, but I think it will be somewhat  
10 challenging to be switching back and forth.

11 Are you taking the lead today, Ms. Perry?

12 MS. PERRY: I am.

13 THE COURT: So we will begin with the motions  
14 pertaining to Ms. Boylan. And as everyone know, there are  
15 many. And then after that, we will turn to the issues  
16 pertaining to Ms. Bennett. Technically, that was calendared  
17 for a different conference time. I do see counsel for Ms.  
18 Bennett in the back.

19 So good afternoon to you all.

20 As the parties know and as the nonparties know, the  
21 discovery issues in this case are so complicated and in some  
22 ways, in my opinion, unparalleled in their complexities. I  
23 preside over many cases with very complex discovery issues,  
24 this one takes the cake.

25 We are here today to attempt to unravel various

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1 subpoenas seeking information about Ms. Boylan. As the  
2 parties know, they are the subject of multiple motions,  
3 including portions of them that are subject to a motion to  
4 quash by Trooper 1, as well a motion brought by Ms. Boylan,  
5 both in the mc docket and in the 893 case docket involving  
6 Trooper 1. And her motion covers various document subpoenas.

7 I would like to hear from her first because we are  
8 going to be taking up her motion first. So the motion to  
9 quash the Boylan document subpoena is your motion, Ms. Perry.  
10 I do have various questions specifically as to certain of the  
11 granular items in the subpoena attachments. But as it is your  
12 motion, I would like to give you the first word.

13 MS. PERRY: Thank you, Your Honor. As Your Honor  
14 has noted, there has been a lot of briefing on this. And I  
15 don't want to belabor any point too much. As Your Honor  
16 knows, I've put in a brief letter yesterday and I did feel as  
17 though I was in someways beating a dead horse because I keep  
18 coming back over and over again to my main point, which is I  
19 cannot see the relevance of Ms. Boylan to this case.

20 I argued that just last week in front of Magistrate  
21 Judge Cave in the companion case, *Bennett versus Cuomo*.  
22 There, Judge Cave saw the point and ordered only  
23 communications between Ms. Boylan and Ms. Bennett to be  
24 produced.

25 Here, there are no such communications because Ms.

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1 Boylan did not know Trooper 1, never met Trooper 1, had no  
2 communications with her, does not even know her identity. So  
3 there are no relevant documents.

4 And what I have heard, and I've only pieced this  
5 together through, you know, having looked through the docket  
6 to some degree, but I don't have the benefit, of course, of  
7 the complete landscape of this case, my understanding is  
8 there's some conspiracy theory that relates to Ms. Boylan,  
9 that she somehow was the instigator, that she made a public  
10 complaint against Mr. Cuomo. She was the first to do so, and  
11 that somehow unleashed a kind of domino effect, and that she  
12 lied, and that created a daisy chain of other women who then  
13 lied, and that's what essentially undid the governor. The  
14 problem with that theory, that conspiracy theory is the women  
15 in that circle had nothing to do with Trooper 1.

16 Now, I would have of course dispute hotly that there  
17 were any lies and, of course, the OAG report corroborated  
18 everything that Ms. Boylan said. And I don't want to get into  
19 the OAG report because I don't think it's relevant, I don't  
20 think it would be admissible. And Your Honor, of course there  
21 is always some skepticism about that. I also have looked at  
22 the 803(a) cases in this Circuit. I don't see how it comes  
23 in. I'll get to that later.

24 But even if it were all a huge massive conspiracy  
25 and everything there were lies, I don't see how that has

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1 anything to do with Trooper 1. She has made allegations. Let  
2 them stand or fall on their own weight.

3 Anything Ms. Boylan said and any of the women she  
4 talked to have nothing to do with the allegations that Trooper  
5 1 made against Governor Cuomo, the harassment and the  
6 retaliation.

7 And so I think on relevance grounds alone, nothing  
8 that they are asking for -- and they don't even ask about any  
9 communications or any allegations relating to Trooper 1 in  
10 their document requests, both to Ms. Boylan and the -- I have  
11 lost count -- maybe 13 other satellite subpoenas that they  
12 have issued yet to additional nonparties, third-parties. They  
13 have nothing to do with Trooper 1 simply because Ms. Boylan  
14 has nothing to add about Trooper 1. So that's the relevance  
15 argument.

16 Then, of course, we go to proportionality. Ms.  
17 Boylan is not a party. She decided, although she would have,  
18 I think any plaintiff's lawyer, and I believe Mr. Licul's firm  
19 reached out to her to take her on contingency, she would have  
20 excellent claims for harassment and retaliation, but she  
21 decided not to take on former Governor Cuomo because of this.  
22 She did not want the brutality of the harassment and the  
23 retaliation that would come with. And yet, she's suffering  
24 exactly those things despite that she did not bring claims.

25 They have -- every time there's a proceeding or a

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1 filing, her name is dragged through the mud again and again  
2 and again. They came after her. They released her personnel  
3 file unlawfully. And every time there is some proceeding, she  
4 gets dragged again and again, her family, her husband, her  
5 name again and again. Why? She's not in this case. She's  
6 not a plaintiff and she's certainly not a defendant. And she  
7 cannot withstand it any long. Yet, it keeps happening,  
8 despite she's not a plaintiff and she's not a defendant.

9 It is not just document requests to her, but it is  
10 to her former campaign manager, her former employer. Somebody  
11 who claims they had a relationship with. The list goes on and  
12 on, as though she were a party.

13 So there is no relevance. There is no  
14 proportionality and the burden is extreme. She's a private  
15 citizen. She has had to retain us. We are not cheap. This  
16 is not a contingency case, of course. And this is not on a  
17 taxpayer's dime, of course. And she has to expend a  
18 tremendous amount of money just to fight for her privacy and  
19 her good name. We have been here for many, many months now  
20 fighting this fight and she shouldn't have to because she has  
21 nothing to do with the case.

22 I know I have said this time and time again, and I  
23 guess I am now perhaps testing Your Honor's patience, because  
24 I know you have read all of the papers very, very carefully,  
25 and I do really appreciate that. So I know Your Honor has



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1 said that you have specific questions. Of course I'm happy to  
2 answer any and all of them. We can go through specific  
3 categories of course, but there are specific arguments with  
4 respect to specific categories. But I do have that overall  
5 umbrella argument that Ms. Boylan shouldn't be here, because  
6 there really is no relevance.

7 THE COURT: So one point I want to follow up on with  
8 you, Ms. Perry, is in your letter that was filed overnight or  
9 this morning, it looks like it was filed on the 10th,  
10 yesterday --

11 MS. PERRY: I apologize that. We got the transcript  
12 from last week's proceedings yesterday and I did think that  
13 was useful to have that in front of Your Honor today.

14 THE COURT: I understand. I appreciate the  
15 additional information. My one question to you is the  
16 sentence at the bottom of the first page, you say this is an  
17 indistinguishable case from the case in the Southern District.

18 In the Southern District, is Ms. Boylan included in  
19 the parties' Rule 26(a) disclosure and is she likely to be  
20 called by the parties or has an accommodation been reached?

21 MS. PERRY: My understanding is she was included in  
22 the disclosures, but the plaintiff's counsel in that case, Ms.  
23 Bennett's counsel, Ms. Katz, who is here, has told us she does  
24 not intend to call Ms. Boylan as a witness.

25 THE COURT: And that information has been

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1 communicated to Judge Cave?

2 MS. PERRY: Yes, it has.

3 THE COURT: That's the key distinction,  
4 unfortunately, Ms. Perry. To that end, I appreciate the  
5 sentiments in your letter and the sentiments that you raised  
6 here today with regard to the lack of the relevance as to Ms.  
7 Boylan's knowledge as to the events alleged pertaining to  
8 Trooper 1.

9 But as I'm sure you have seen, the Complaint in this  
10 case is broad and dry. It contains numerous allegations that  
11 appear to be largely lifted from the OAG report and similar  
12 documents and Ms. Boylan is squarely in the case.

13 I have repeatedly asked plaintiff's counsel if they  
14 would be willing to narrow the witnesses that they anticipate  
15 calling to prove the hostile environment and have been  
16 repeatedly told no.

17 So the Court is really left with a bind, because Mr.  
18 Licul has stated unequivocally his intention to prove up the  
19 harassment in the sort of circle around Governor Cuomo in his  
20 efforts to establish the hostile environment.

21 Mr. Licul, is that still your intention?

22 MR. LICUL: Your Honor, it is, especially given the  
23 defense, which is likely to be, as anticipated, that Mr.  
24 Cuomo's conduct was not pervasive and also that to the extent  
25 some of these things happened, the victims were

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1 misinterpreting what his motive and his intentions and this  
2 was at best a mistake.

3 THE COURT: Right.

4 MR. LICUL: So long as that is the defense, I don't  
5 see how we could -- I mean, if Mr. Cuomo choses to waive that  
6 defense, that's different. But, nonetheless, I don't mean to  
7 be going afield of Your Honor's question. I think the  
8 information is relevant. I do, however, think that the Court  
9 can and should strike the proper balance to protect Ms.  
10 Boylan. I think that is -- that proper balance is in the  
11 letters that some of the nonparties have filed, the letters  
12 that some of the nonparties have filed about how to proceed,  
13 and that is party discovery, Mr. Cuomo's deposition, see what  
14 the documents say. That's what Magistrate Judge Cave did,  
15 across the river, and then deal with the depositions.

16 THE COURT: To be clear, Judge Cave did or did not  
17 direct the order of depositions vis-à-vis the parties and  
18 nonparties?

19 MR. LICUL: She did not direct the orders, but  
20 forgive me, Your Honor, I believe what she did was to direct a  
21 limited amount of document discovery and then, based on that,  
22 decide whether or not the depositions were necessary, the  
23 deposition was necessary.

24 THE COURT: I've reviewed her order. So I do  
25 understand what she ruled with regards to Ms. Boylan. I just

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1 wasn't clear on whether or not you had intended it to imply  
2 that she had indicated that the parties needed to be deposed  
3 first.

4 MR. LICUL: No, I don't think that issue was  
5 reached. I just meant that that she has not yet decided the  
6 issue of the deposition.

7 THE COURT: I did see that that was being held  
8 pending Ms. Boylan's Complaint for the rulings as to the  
9 documents camp.

10 So the document subpoenas that Ms. Boylan has raised  
11 in her motion include a subpoena to her, of course, as well as  
12 a subpoena to one Harold Zemsky, a subpoena to the executive  
13 chamber, a subpoena to the Empire State Development  
14 Corporation, and a subpoena to Elizabeth Fine. Is that the  
15 universe of subpoenas in your opening motion, Ms. Perry?

16 MS. PERRY: That was in the opening motion, but  
17 since then there have been any other number of other  
18 subpoenas. We didn't want to keep making sequential motions.  
19 But there was one as recently I believe as last week. So we  
20 held, obviously both for, you know, judicial resources and Ms.  
21 Boylan's, we didn't want to keep making motions, but I assume  
22 Your Honor's -- well, they're the same type of documents that  
23 are being requested in each.

24 THE COURT: There is a lot of overlap in terms of  
25 some of the requests.

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1 MS. PERRY: Yes.

2 THE COURT: So given the situation that the Court is  
3 presented with vis-à-vis the way that the Complaint is  
4 charged, the parties' representations to date, the very  
5 significant likelihood that unless there is a dramatic change  
6 of strategy by the plaintiff or defendant, or both, Ms. Perry,  
7 I do think Ms. Boylan is going to be potentially called as a  
8 witness in this case and Mr. Cuomo is entitled to take some  
9 discovery from her. So that then leads to my questions as to  
10 some of the underlying requests themselves.

11 Ms. Glavin, who is best situated to go line by line  
12 on these documents subpoena requests?

13 MR. GLAVIN: I am.

14 THE COURT: Okay. If we can turn to the Boylan  
15 document subpoena, document request 1A requests documents,  
16 basically all documents regarding any of your personal  
17 interactions with Governor Cuomo. This seems incredibly vague  
18 to me.

19 Can you shed some light on what that subpoena  
20 request is supposed to mean?

21 MR. GLAVIN: Sure, Your Honor. Ms. Boylan, our  
22 understanding, talked about interactions with Governor Cuomo  
23 with other people and talked about them in very favorable ways  
24 and that's sort of what we were aimed at getting at and then  
25 suddenly changed her tune in 2020.

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1 I don't know sort of what -- you know, I don't know  
2 what Ms. Boylan has with respect to anything regarding her  
3 interactions, but to the extent she's talking about -- I mean,  
4 she published an essay on February 24th of 2021 entitled, My  
5 Story of Working for Governor Cuomo, and in it she details  
6 about, you know, her allegations, which, of course, we  
7 proposition is completely false, but interactions about the  
8 Governor trying to keep tabs on her, which was not true, but  
9 that's what she stated, that the Governor touched her arms,  
10 her lower back, her legs.

11 If she has communications, particularly any  
12 contemporaneous communications about her interactions, whether  
13 he physically touched her, her interactions with him on the  
14 plane. It relates to her allegations. She's very specific  
15 about some interactions and that's what we are trying to  
16 capture.

17 But we're also, importantly, trying to capture the  
18 very favorable things she was saying about Governor Cuomo  
19 contemporaneously with working with him and in the year after.

20 THE COURT: How are these personal interactions that  
21 go to your comments about touching or inappropriate  
22 interactions different from Subsection B of the same request,  
23 which is any and all documents regarding allegations of sexual  
24 harassment and misconduct?

25 MR. GLAVIN: The way I think it is different, Your

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1 Honor, is that to the extent she was saying favorable things  
2 about Governor Cuomo, which she was publicly as well -- so we  
3 have tweets that was talking about so proud to work with  
4 Governor Cuomo, et cetera, but to the extent she talks about  
5 interactions that are contrary to sexual harassment, like I  
6 met with the Governor today, it was a great meeting, the  
7 Governor invited me to X, Y, and Z. Now, she may not have  
8 these. These may be all be with the Empire State Development  
9 Corporation, which is why we have a subpoena to them as well.  
10 But she may not have any of these, or she might have personal  
11 communications where she's saying favorable things about him  
12 to her friends.

13 I mean, one other thing is through the discovery  
14 that we've gotten that I have called Trooper 1 centric  
15 discovery, like we know that Ms. Boylan reached out to Vinny  
16 Straface, who was head of the PSU detail around 2019. She  
17 sent him a message saying, you know, please say hello to the  
18 governor for me, checking in. That was a positive message.  
19 It is that type of thing that we're looking for where she has  
20 favorable things to say him.

21 THE COURT: This is request 1A and B. Ms. Perry,  
22 would you like to be heard?

23 MS. PERRY: Yes, Your Honor. This is the issue with  
24 going through -- what they are trying to do obviously with  
25 each of these 16 requests is impeach Ms. Boylan. So it is

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1 going to be a mini trial. This is just the first. There's  
2 obviously going to be I guess 10 other complainants they are  
3 going to try to do this with. If the issue here is -- first  
4 of all, I want to correct something. If Your Honor is  
5 distinguishing this case from the Bennett case because Mr.  
6 Licul refuses to say that he won't call Ms. Boylan, in fact,  
7 in that case the defendant has said that he will call Ms.  
8 Boylan. So she's going to be a witness apparently in both  
9 cases. SO I don't think there is a distinction. She's going  
10 to be a witness in both cases.

11 But if the point here is to just show -- if Mr.  
12 Licul wants to show there was harassment of other women, the  
13 OAG report points out -- we have a footnote in my letter of  
14 yesterday -- that there are plenty of well-documented,  
15 corroborated instances of harassment against Ms. Boylan. And  
16 they even say, because there they did have an opportunity to  
17 impeach Ms. Boylan and the AG concluded even if you don't  
18 believe some of these contested incidents, like the  
19 strip-poker incident that is so hotly contested, here's what  
20 we have in writing, this incident where he says she's prettier  
21 than his ex-girlfriend, this incident where he wrote this or  
22 this or that.

23 So there are plenty of completely corroborated  
24 incidents where it was completely inappropriate workplace  
25 conduct. So why do we have to have these -- we have to go



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1 back and forth, where we have to go back five years where she  
2 said nice things about Mr. Cuomo and upset her entire life and  
3 then have his counsel and Mr. Cuomo pick through all of her  
4 private communications with her friends and, you know, God  
5 knows who, and then have that, you know, again be scrutinized  
6 in the press and in the public. Why?

7 THE COURT: Because bias is always relevant.

8 MS. PERRY: For a nonparty, there's plenty --

9 THE COURT: And Mr. Licul plans to call her.

10 MS. PERRY: Well --

11 THE COURT: It's different. If they choose to call  
12 her, I have no idea why they'd want to do that.

13 MS. PERRY: Or pick through her entire life to  
14 impeach her when it's not clear exactly what the issues are  
15 going to be, they are going to be narrowed before trial, but  
16 to allow them to scrutinize her entire life under a microscope  
17 does not seem in -- I do think public policy should come into  
18 this at this some point. She is a victim.

19 THE COURT: I am here.

20 MS. PERRY: I know you understand that, Your Honor.

21 THE COURT: I'm here in an effort to narrow these  
22 subpoenas as much as possible. I understand the policy  
23 rationale. I understand the policy implications. And I fully  
24 share and appreciate your concerns outlined in your letter,  
25 including the concern outlined in footnote four where you

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1 describe how the subpoenas has been a living nightmare for  
2 her. I truly am sympathetic to that. The problem I am faced  
3 with Ms. Perry is that bias is always relevant under the case  
4 law for impeachment. And if there is evidence of bias,  
5 evidence of changed attitudes and evidence that can be gleaned  
6 from these communications, they have a right to cross-examine  
7 her about that. I want to work on narrowing this as much as  
8 possible. That's why we are here.

9 So in terms of these documents, Ms. Glavin, what  
10 timeframe is appropriate for these documents? Because that is  
11 another thing I found lacking in all of the subpoenas, was  
12 appropriate limits on the timeframe and that we are going to  
13 be putting limits on each category that I find relevant, and  
14 I'm not going to find most them relevant. Let's just start  
15 with that premise.

16 I do see that the documents regarding certainly her  
17 allegations as to sexual harassment and her misconduct  
18 Subsection 1B of your request relevant. Starting with that,  
19 what is the timeframe, Ms. Glavin, that you are seeking?

20 MR. GLAVIN: Your Honor, with respect to the  
21 timeframe, it is a self-limiting timeframe because she first  
22 makes her allegations, at least as far as we know, in December  
23 of 2020. That said, we have seen documents from Ms. Boylan  
24 talking about, you know, the Governor. She worked for ESD  
25 from 2014 until September of 2018. So there's necessarily a

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1 self limiting because of certain events.

2 THE COURT: Right. Answer the question, please.

3 What timeframe are you seeking documents with respect to 1B?

4 MR. GLAVIN: With respect to 1B of any allegations  
5 of sexual harassment, this would have to go back to when she  
6 first started working.

7 THE COURT: Until when?

8 MR. GLAVIN: 2014. She started working for ESD in  
9 2014. To the extent she was making contemporaneous  
10 allegations about Governor Cuomo when she was working for him,  
11 that's what her claims said. She went public in December.  
12 But to the extent she said anything privately about him while  
13 she was working for him, we are entitled to that because this  
14 is all about her claim that she was sexually harassed in the  
15 workplace.

16 THE COURT: Do you have any good-faith basis for the  
17 notion that there are such documents preceding December 2020?

18 MR. GLAVIN: Yes. Absolutely, Your Honor.  
19 Absolutely, Your Honor, because we see in her production for  
20 the AG's office, she has documents she claim corroborate her  
21 allegations as early as 2017 or 2016. If you look at her  
22 media article, she claims that the Governor by inviting her to  
23 his office at a holiday party in 2016 was part of sexual  
24 harassment.

25 She claims that she was at a meeting in the mansion

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1 in February of 2017 where she classified that as sexual  
2 harassment.

3 We believe all of that is false. Let me put it this  
4 way: I will be surprised if we see allegations of sexual  
5 harassment by Ms. Boylan because Ms. Boylan is lying. This  
6 did not happen.

7 This is also very important. Ms. Boylan doesn't  
8 have anybody that corroborates her allegations, because to the  
9 extent that she has taken that position, that is what was  
10 always glaring to us, is that nobody saw what Ms. Boylan  
11 claimed.

12 Ms. Boylan said lots of people saw me sexually  
13 harassed but nobody corroborates her.

14 THE COURT: What is the end date for this request?

15 MR. GLAVIN: Up to the date of the subpoena, which  
16 is March of 2023. But one of the reasons we are asking for  
17 this is because Ms. Boylan, we know from the deposition of Ana  
18 Liss, that when Ms. Boylan received her subpoena, she  
19 contacted Ana Liss. We've seen it in the texts. She also --

20 THE COURT: We will talk about Ms. Liss later. I  
21 really need to --

22 MR. GLAVIN: Until the date of the subpoena.

23 THE COURT: Ms. Perry, what is your reaction to 2016  
24 to March of 2023 with regards to document request one of the  
25 Boylan document subpoena?

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1 MS. PERRY: I think, A, it's way too broad. She  
2 worked with him for years or for him for years, so, I mean, I  
3 just think that's casting the net way too far.

4 So allegations of sexual harassment or misconduct,  
5 again, I don't think any of this is relevant because she's not  
6 in the case, but I think, you know, that at least would cabin  
7 it a little bit more narrowly.

8 THE COURT: And the years that she has proposed,  
9 she's saying as early as 2016 to March 2023.

10 MS. PERRY: I mean, I think -- I mean, under their  
11 theory, it is very hard for me to buy this logic. But I guess  
12 under their theory, I can't really fight back.

13 THE COURT: All right. So turning next to request  
14 two through five, which pertain -- documents regarding the OAG  
15 investigation, the AJC investigations, and documents  
16 reflecting communications with Ms. Boylan and the news media.

17 Ms. Glavin, what would be the timeframe of that?

18 MR. GLAVIN: So for -- let's just focus on two and  
19 three, the investigations. I do think it is necessarily a  
20 self limiting because we know when the investigations  
21 happened. So we would do it from, you know, the beginning of  
22 2021. The investigations started -- the referral was March 1st,  
23 but there was discussion about that publicly in the press in  
24 the weeks before that. I would put it in the January 2021  
25 through the release of all of the testimony and the

1 transcripts, which ended in January of 2022.

2 THE COURT: And No. 4 is potentially very broad. I  
3 would be surprised if Ms. Boylan had not been contacted by  
4 multiple members of the media speaking to talk to her. And to  
5 the extent that members of the news media are seeking to talk  
6 to her and she's blowing them off or not responding, it's  
7 irrelevant.

8 MR. GLAVIN: Yeah, but she didn't do that, Your  
9 Honor.

10 THE COURT: Well, that may or may not be so. To  
11 seek all documents reflecting communications between Ms.  
12 Boylan and the news media implies incoming. It's not just  
13 outgoing. To the extent that the news media is calling her  
14 off the hook and she's not answering some of those calls,  
15 which I suspect did happen, it's irrelevant, isn't it?

16 MR. GLAVIN: With respect to -- if I might have a  
17 moment to confer with co-counsel.

18 THE COURT: Yes.

19 MR. GLAVIN: Your Honor, we'd limit this one to any  
20 journalist that she responded to.

21 THE COURT: Ms. Perry, would you like to be heard  
22 about these requests, two, three, and four?

23 MS. PERRY: Yes, Your Honor.

24 I would take strong exception to all of them. With  
25 respect to -- I mean, two and three, anything that she would

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1 have would be privileged and would, you know, to the extent we  
2 have to comb through all of it I think would be burdensome, to  
3 have to go through all of it and create a privilege log, I  
4 don't think that the -- what's the expression? That the juice  
5 would be worth the squeeze.

6 As far as the media outlets, I think they are going  
7 to be, you know -- anything that she would have said, they  
8 already have as publicly available, and I don't think there's  
9 going to be a lot more there. So I also think it's the same  
10 thing. It's relevance/burden analysis. I don't think it's  
11 fair to make her go through all of that when there's really  
12 not going to be much there in terms of relevance.

13 So if we are trying to do, you know, this fairly to  
14 her, I think it is -- you know, you have given them very broad  
15 discovery with respect to number one, there is not going to be  
16 anything truly additive with two, three, and four.

17 THE COURT: Let me just ask you a question, Ms.  
18 Perry, in terms of procedural history here. Has the  
19 production that she made to the OAG been provided in full?

20 MS. PERRY: It has and they have certainly.

21 THE COURT: They have critiqued it?

22 MS. PERRY: They have. That's fair to say.

23 THE COURT: And did you also provide the request  
24 that was provided by the OAG and/or the AJC?

25 MS. PERRY: I think they have the request, yes. So

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1 we -- they have the request and we provided them with  
2 everything that was provided to the AG's office and that the  
3 AG accepted without complaint. So that was the accommodation  
4 that was made with the AG's office.

5 THE COURT: Okay. I don't want to hear about the  
6 motion with regards to the accommodation with the AG's office,  
7 but I do want to understand whether or not you agree that you  
8 have in your possession the OAG request and the AJC request.

9 MR. GLAVIN: No, I don't have the Assembly Judiciary  
10 Committee's request. I have the OAG subpoena to Ms. Boylan  
11 and we have 25 pages that she produced under the alleged  
12 accommodation. I'm sorry. I couldn't help that.

13 I will tell you what we're looking for, Your Honor.

14 We know that there were communications, and maybe  
15 this is going to be covered with category number one, we know  
16 there were communications amongst the complainants and others  
17 about the investigation. Communications with people before  
18 they went in and were interviewed. We know there were  
19 communications after people went in and were interviewed by  
20 the AG's office. We also know that there were communications  
21 when the report came out, sort of what it said, what it didn't  
22 say. We know that there were communications when the  
23 transcripts were released.

24 So just so Your Honor is aware, the Attorney General  
25 released the transcripts publicly, she also released



1 videotapes publicly. To my knowledge, the AG's office didn't  
2 tell the women that they were going to be releasing this. And  
3 Ms. Perry can correct me if I am wrong, is that boom, these  
4 just came out. And we know there was chatter amongst the  
5 women about that, about their testimony. We are very focused  
6 on that.

7 Also, to the extent there are e-mail exchanges  
8 between the attorneys and the AG investigate, like, for  
9 instance, I think there were follow-up questions that may have  
10 been posed to attorneys, and if there were statements to that,  
11 we're very interested in that.

12 THE COURT: Okay. So back up. How are the  
13 communications that you say you're seeking with regard to the  
14 OAG and the AJC investigation vis-à-vis the complainants  
15 speaking with one another not subsumed within request five?

16 MR. GLAVIN: Let me just take a look. Just to the  
17 extent Ms. Boylan, because request five talks about the  
18 executive chamber and former employees. If she was discussing  
19 her interview with her people subsequent to the interview,  
20 what she said, what she didn't say, so it's a limited universe  
21 on five. So if she had conversations with other people about  
22 what she told the AG's office and what she didn't tell the  
23 AG's office.

24 THE COURT: Okay. So with regard to all documents  
25 regarding the OAG investigation, the AJC investigation, I

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1 certainly don't think it is appropriate to make Ms. Boylan  
2 reproduce the productions that she has already given you that  
3 were provided to those entities.

4 Do you have the AJC request, Ms. Perry?

5 MS. PERRY: I do not.

6 THE COURT: This question as to communications  
7 pertaining to the statements made to the OAG and/or the AJC,  
8 what is your reaction?

9 MS. PERRY: I'm sorry, that's not -- that's not in  
10 the document request.

11 THE COURT: She is saying that that's part of all  
12 documents regarding the OAG investigation.

13 MS. PERRY: So pertaining to -- I mean, look, I  
14 think document request one is -- that Your Honor has just  
15 ordered that we produce, I think will capture what they are  
16 looking for, including -- we kind of peaked ahead to request  
17 five as well, but many -- so I don't know, you know, why we  
18 need to go much further pertaining to the AG investigation.

19 Certainly I'm not really understanding why -- how  
20 communications between counsel and the AG's offices could  
21 possibly be captured within the document request. I mean,  
22 that's not something that would be produced under this  
23 subpoena. I may be missing exactly what they're looking for  
24 here, but I don't see how that would be.

25 THE COURT: Ms. Glavin, would you like to clarify?

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1 MR. GLAVIN: Yes. Absolutely.

2 To the extent there were communications back and  
3 forth between counsel about what documents she has and doesn't  
4 have, they might have a follow-up from her interview: We have  
5 two follow-up questions, can you pose this to your client?

6 I mean, I can tell you I know from having lived  
7 through that investigation that, you know, there would be  
8 communications about when documents are coming, do you have  
9 more documents, you mentioned this in your testimony, can you  
10 produce X to us. Yes, we're very interested in that.

11 THE COURT: Does this exist, Ms. Perry?

12 MS. PERRY: I didn't represent Ms. Boylan at the  
13 time. But if there are communications between counsel that  
14 were not then -- if they were forwarded then to the client, I  
15 mean, that arguably would be privileged if it's --

16 THE COURT: She is not seeking your client  
17 communications. She's seeking attorneys' communications with  
18 the investigators.

19 MS. PERRY: But why would that be covered by this  
20 subpoena? Are you subpoenaing counsel?

21 MR. GLAVIN: No. It's covered by the subpoena  
22 because the definition of you, the definition includes Ms.  
23 Boylan's representatives. But to the extent Ms. Boylan's  
24 attorneys made representations to the Attorney General's  
25 investigators on her behalf about her allegations, the

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1 documents she was producing yes, we absolutely want those.

2 MS. PERRY: I don't know if there are any such  
3 communications. As I said, I didn't represent Ms. Boylan. So  
4 I don't know. But, I mean, my objection is going to be time  
5 and time again that they're going so far afield. From day  
6 one, you know, they are trying to get underneath the AG's  
7 Office investigation, and, you know, they've been saying we  
8 create it and undermine it, and they're trying to do that now  
9 through the vehicle of Ms. Boylan. I do think that is  
10 completely appropriate. They don't need to -- if Your Honor  
11 thinks it's appropriate in some way for them to be able to  
12 impeach Ms. Boylan, they don't need to impeach the entire AG  
13 Office investigation as well.

14 THE COURT: But the problem also is Mr. Licul's  
15 inclusion of the allegations of the OAG report in the  
16 Complaint and he stated his intentions to introduce it at  
17 trial. Because, as we have discussed in prior proceedings, I  
18 have every confidence that Ms. Glavin is going to seek to  
19 preclude it. And in order to do so, she needs to be  
20 proffering strong factual arguments to the trial judge. So  
21 we've been going around and around. I'm laying the foundation  
22 as to why things may be irrelevant, Ms. Perry. And the  
23 further we dig into the record, unfortunately, this is where  
24 we are. And this is not just simply a matter of impeachment;  
25 it's also a matter of preparing his defenses, and one of his

1 defenses is this report shouldn't come in.

2 MS. PERRY: And that does get to -- and, you know,  
3 many nonparties have made this argument, and we've made it as  
4 well. Perhaps Your Honor implicitly is ruling, but we have  
5 asked to stage discovery of course in someway. A lot of these  
6 issues --

7 THE COURT: I'm not ruling today on staging  
8 discovery specifically. I'm trying to narrow these subpoenas  
9 to get the documents rolling so that we can then eventually be  
10 in a position to discuss. So we need to get all these  
11 documents production issues unstuck, which is why I want to  
12 focus on the document subpoenas today. I'm not intending to  
13 order her deposition instantly. We have to get the document  
14 subpoenas up and going.

15 I may well decide to order parties depositions  
16 first. That's not what we are here to talk about. We are  
17 here to talk about, while I have all of you here, are these  
18 subpoenas, so we can narrow them as much as possible.

19 MS. PERRY: Well, I don't think any of these  
20 documents related to the AG investigation, AJC's or any media  
21 outlet have any relevance. We have agreed, or Your Honor has  
22 ruled, that we would produce documents relevant to harassment,  
23 allegations of misconduct, allegations against Governor. So  
24 to the extent that is subsumed within two, three, and four,  
25 obviously we are going to be producing them. But I think when

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1 you're getting so in the weeds, it becomes more burdensome and  
2 that would outweigh the relevance. That is my argument.

3 THE COURT: Thank you. I do understand the  
4 argument.

5 Ms. Glavin, if I were to direct Ms. Boylan to search  
6 for the documents -- I'm not saying that I am going to -- but  
7 if I were to direct her to search for the documents reflecting  
8 these communications you are concerned about and including the  
9 communications in request five, what would be the appropriate  
10 timeframe?

11 December 2020, starting? When the investigation  
12 started?

13 MR. GLAVIN: No, Your Honor. I just want to throw  
14 out, at a minimum, we would need it going back to at least  
15 March of 2020 because that's when Ms. Boylan sent two  
16 threatening texts to members of Governor Cuomo's staff. These  
17 are the texts where my memory is long and so are my resources,  
18 the future is coming after A holes.

19 MS. PERRY: That's not when the investigation  
20 started.

21 MR. GLAVIN: Your Honor, it goes to her credibility  
22 and her bias and why she made these allegations up.

23 THE COURT: How is that even -- how does that fall  
24 within any of these categories?

25 MR. GLAVIN: I want to go back and take a look and

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1 let me just --

2 THE COURT: Right. But the text you're describing,  
3 literally, which category would they fall under?

4 MR. GLAVIN: It would fall under number five.

5 THE COURT: Who were they sent to?

6 MR. GLAVIN: They were sent to I believe Anabel  
7 Walsh, and I can't remember -- it's in our moving papers, Your  
8 Honor.

9 But, you know, one of the defenses of Governor Cuomo --

10 THE COURT: She was in the executive chambers.

11 MS. PERRY: I didn't realize that we were talking  
12 about five. I have some serious objections to five.

13 THE COURT: I asked her timeframe and I'm trying to  
14 get that answer for five.

15 MS. PERRY: I'm sorry.

16 THE COURT: For communications with the other people  
17 and for five, I want a timeframe, and then it's your  
18 opportunity.

19 MR. GLAVIN: Your Honor, I screwed up on who those  
20 two texts were. It was to Danni Lever -- D-A-N-N-I L-E-V-E-R  
21 -- and Robert Mujica, M-U-J-I-C-A.

22 THE COURT: Do you already have these texts?

23 MR. GLAVIN: I don't know if there are more. Those  
24 are the two that we know about. Yes, we have those texts and  
25 they are in our papers.

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1 THE COURT: And they're from 2020?

2 MR. GLAVIN: They are from March of 2020.

3 Just one moment.

4 To the extent, you know, it's not covered by one,  
5 okay, which is any allegations or other misconduct about  
6 Governor Cuomo, I think we want these going back to -- I think  
7 we would go back to January of 2020. She announced that she  
8 was running against Congressman Nadler in 2019. She was going  
9 to primary him. And, you know, one of our theories is she  
10 wanted the support of the Governor's office in that raise.  
11 She didn't get it. COVID happened. The Governor issued an  
12 executive order of March of 2020. That goes to request  
13 number --

14 THE COURT: Let's just be really clear, Ms. Glavin:  
15 We are not giving you many of the subpoena requests that are  
16 included herein. We are not going to be proving up extrinsic  
17 evidence of everything that Ms. Boylan did in 2020, 2021, and  
18 2022. It's is not realistic.

19 MR. GLAVIN: I understand.

20 THE COURT: So some of these categories are so, so  
21 afield from the issues in this case, I need a timeframe.

22 MR. GLAVIN: January 1st of 2020.

23 THE COURT: To when?

24 MR. GLAVIN: To the present.

25 THE COURT: Ms. Perry, I'd like to hear your



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1 response to January 1, 2020 to the present with regard to  
2 document request number five.

3 MS. PERRY: Well, first of all, not to the present,  
4 to the issuance of the subpoena. But also I think -- you  
5 know, Your Honor has ruled with respect to category one. This  
6 is going to be incredibly overbroad. She has relationships  
7 with a lot of these women. I mean, they have made what is  
8 normal and healthy support for other women who are victimized  
9 into something disgusting and nefarious. They speak amongst  
10 themselves. They're a network of survivors and they talk to  
11 each other, and they are friends, many of them. So there are  
12 going to be a lot of communications where they send each other  
13 a happy face emoji, okay.

14 We're not going to go through all of these. If  
15 there is an allegation of sexual harassment or misconduct,  
16 we've already, you know, said that that's going to be  
17 produced. But all communications between -- with the  
18 executive chamber, any of its current or former employees  
19 really is a bridge too far, including all of these people.  
20 Laying bear all of these communications seems insane. I'm  
21 sorry to put it so bluntly.

22 Again, number one, okay, again, not relevant to this  
23 case, but okay. But why are we, you know, opening this whole  
24 Pandora's box, including a million things that are not going  
25 to be relevant, but that are very private and very intrusive.

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1           So okay with category one. But really, do we have  
2 to go this far into peoples' personal relationships.

3           MR. GLAVIN: Your Honor, it's self limiting. It's  
4 concerning Governor Cuomo.

5           MS. PERRY: That's not -- I mean, there's a lot  
6 about Governor Cuomo.

7           MR. GLAVIN: Okay. So it's going to capture a  
8 smiley face.

9           MS. PERRY: These are people within the executive  
10 chamber.

11          THE COURT: Well, it does say regarding Cuomo. It  
12 just says regarding Cuomo. I mean, it's very broad. These  
13 are people literally working in the executive chamber. All  
14 communication regarding Governor Cuomo? They're all working  
15 there day to day at times.

16          MR. GLAVIN: Your Honor, if you are looking at what  
17 this is, Charlotte Bennett, she didn't work with Governor  
18 Cuomo in the executive chamber. She's a complainant. To the  
19 extent she has had communication Charlotte Bennett, what we  
20 are --

21          THE COURT: You're seeking these from everybody.  
22 This is the tip of the iceberg, right.

23          MR. GLAVIN: At a minimum, we need it with any of  
24 the complainants, any communications with any of the  
25 complainants. So these are the people that are mentioned. We

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1 want the communications with Alessandra Biaggi, because we've  
2 already seen communications with both Lindsey Boylan reaching  
3 out to her in December of 2020. Biaggi is a former executive  
4 chamber employee, reaching out to her to get support to back  
5 her up. So it is all of the women.

6 THE COURT: When you say getting support to back her  
7 up, what language did this witness use, allegedly, in the  
8 text?

9 MR. GLAVIN: I can't -- it's basically I just spoke  
10 to Biaggi, she wants to speak to you, meaning Charlotte  
11 Bennett. We see this in December 2020.

12 THE COURT: So why?

13 MR. GLAVIN: That's very important. It goes to Ms.  
14 Boylan -- her allegations are false. We're going to start  
15 with the premise, because I've heard a lot over there, but  
16 please allow me to --

17 THE COURT: I understand your position.

18 MR. GLAVIN: They're false. She made up her  
19 allegations because she was running for Manhattan borough  
20 president. She was basically fired, de facto fired from the  
21 executive chamber.

22 THE COURT: You have ample impeachment opportunity  
23 and you have a good-faith basis for all of the things you're  
24 saying to me to impeach her. But none of this is going to be  
25 provable by extrinsic evidence under 608(b).

1           Why do you need every single text and every single  
2 document, Ms. Glavin? It is just too much with nonparty  
3 witnesses.

4           MR. GLAVIN: With the complainants, absolutely.  
5 They are all named in this Complaint. How is it not relevant  
6 that Charlotte Bennett and Lindsey Boylan are talking. And  
7 Lindsey Boylan -- what we have now seen in discovery in  
8 Bennett case is that Lindsey Boylan was lying to Charlotte  
9 Bennett to get her to come forward. Provably false statement  
10 that Boylan made to Charlotte to get her to come forward.

11           Again, I'm now limited because we got a production  
12 two nights ago of three dozen videos that Charlotte Bennett  
13 took of herself talking about -- in some of them -- there's  
14 five of them where she's talking about her conversations with  
15 Lindsey Boylan and Lindsey Boylan's lying to her. I would  
16 like to be able to -- they've been marked confidential, but  
17 there is like a very -- what we've seen in the videos is  
18 incredibly exculpatory and we think consistent with all of our  
19 defenses and undermines Boylan tremendously, what Charlotte  
20 Bennett's talking about what Boylan is telling her.

21           THE COURT: There has to be a way to narrow this,  
22 whether it is by date range or topics, but all documents  
23 reflecting communications with the executive chamber or its  
24 former employees, I don't even know how she identifies who  
25 that would include, that's A. B, it's just a lot. So please

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1 make a suggestion.

2 MR. GLAVIN: Okay.

3 MS. PERRY: How is that not subsumed by request one?  
4 That's what they're looking for. If she made an allegation of  
5 sexual harassment to Charlotte Bennett or --

6 THE COURT: Unfortunately, it says regarding Cuomo  
7 including.

8 MR. GLAVIN: Your Honor, Ms. Boylan testified to the  
9 Attorney General's office that she began reaching out to women  
10 current and former employees of the executive chamber  
11 repeatedly to try to get other people to come forward to the  
12 point that one woman, you know, I can tell we are looking for  
13 text messages with -- her name is not public.

14 THE COURT: There's nothing nefarious about  
15 encouraging a survivor of sexual harassment to come forward.  
16 There's nothing nefarious about that, Ms. Glavin. Please  
17 stop implying that there is.

18 MR. GLAVIN: Your Honor, there is something  
19 nefarious to try to get someone to come forward that has not  
20 been sexually harassed. That's the difference. To state  
21 something to embellish and to lie to come forward --

22 THE COURT: Of course.

23 MR. GLAVIN: -- so I take exception.

24 THE COURT: Every argument that you're making  
25 presumes that your theory of the case is correct. And of

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1 course you are entitled to zealous advocacy. But there are  
2 many, many, many perspectives on this story --

3 MR. GLAVIN: Agreed.

4 THE COURT: -- as evidenced by the OAG report --

5 MR. GLAVIN: Agreed.

6 THE COURT: -- and all of the witnesses.

7 MR. GLAVIN: Agreed.

8 I have to be heard on this. Your Honor, the OAG  
9 report is not worth the paper its written on. That report is  
10 a joke.

11 THE COURT: I know your views.

12 MR. GLAVIN: It is a joke and it is an embarrassment  
13 to legitimate law enforcement.

14 THE COURT: And I have posited my skepticism, that  
15 it is likely to be introduced at trial, but yet here we are.

16 MR. GLAVIN: Yes.

17 THE COURT: So let's focus.

18 MR. GLAVIN: Okay.

19 THE COURT: Is there anything that we can do to  
20 narrow request five.

21 MR. GLAVIN: Yes. We have already agreed to January  
22 of 2020.

23 THE COURT: To March 23?

24 MR. GLAVIN: To March 23.

25 THE COURT: All communications with all of these

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1 people regarding Cuomo writ large?

2 MR. GLAVIN: No. First of all, let's start with the  
3 complainants, okay.

4 MS. PERRY: Your Honor, can I interject?

5 THE COURT: Yes.

6 MS. PERRY: I don't understand if she's just  
7 speaking with one of these individuals about Cuomo but it's  
8 not about a sexual harassment allegation, why is that  
9 relevant? I haven't understood the theory of this document  
10 request.

11 THE COURT: The papers and various other arguments  
12 strewn throughout the case suggest that some of these women  
13 have changed their tune. They were times they loved him.  
14 They were times he advanced their careers, and then they  
15 turned on them. That's part of their theory of the case.

16 So you know, an emoji chain that he's the best,  
17 heart, heart, I'm not saying that exists, I have no idea,  
18 could be probative for impeachment purposes and/or to prove  
19 this change of attitude or bias. Ms. Glavin and I have,  
20 unfortunately, been down this conversation before. I feel  
21 like I have seen this movie before. So, I mean, that's part  
22 of the issue.

23 MS. PERRY: There has to be some proportionality.  
24 To require her to go through all of her documents when she has  
25 a lot of communications with these people, to suss out if

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1 there is anything regarding Governor Cuomo so they can see if  
2 at some point someone sent a heart emoji about him, to prove,  
3 you know, this convoluted theory, it is so, so far-fetched.  
4 They have a lot to work with, as they have said. They have  
5 productions from lots of other people. There is obviously a  
6 balancing.

7           They have a lot here. We're giving them everything  
8 that she has ever said about sexual harassment. So, I mean,  
9 this is a person who has spent hundreds of thousands of  
10 dollars on attorneys, I'm sorry to say. I think I'm worth it,  
11 but it's a lot. And now that she has to do this document  
12 review and go through all of this, it is a lot. And it does  
13 need to be considered. To find what? If someone said  
14 something nice about Governor Cuomo at some point. They  
15 worked for him. Surely they did. That's so far down a road.

16           You know, they are getting a lot here already.

17           THE COURT: All right. I understand the arguments.

18           MR. GLAVIN: Added to this is Ms. Boylan has a  
19 documented history of threatening witnesses, including former  
20 people in the chamber. So, Howard Zensky, this would be  
21 captured when she said I can't wait to destroy your life.  
22 Okay. We want to make sure we're getting that.

23           There was another witness, Melissa Quesada, who is a  
24 very close friend of Ms. Boylan's. We have seen her interview  
25 or -- we have seen her interview memo, and she was shocked by



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1 Ms. Boylan's sexual harassment allegations because she was  
2 very good friends with her when they were working in the  
3 chamber together and would have expected her to say something  
4 and didn't. And when Lindsey Boylan reached out to Ms.  
5 Quesada in the spring of March of 2021 and Ms. Quesada did not  
6 respond to her, she called her a bitch.

7 MS. PERRY: Your Honor --

8 MR. GLAVIN: We want to get those -- Lindsey Boylan  
9 was threatening people in the chamber.

10 MS. PERRY: I think Ms. Glavin is undercutting her  
11 argument, not supporting it. She's saying all of these  
12 instances where they can show that Ms. Boylan had threatened  
13 this person or lied about this. Great. So they have a lot to  
14 impeach her about. Why do they need to impose on her to go  
15 through hundreds of thousands of documents to impeach a person  
16 who may not be a witness when they have all of this already.  
17 Great. She's going to be perhaps --

18 MR. GLAVIN: We don't --

19 MS. PERRY: -- one witness at trial. I mean, you  
20 don't need -- she's one witness at trial, which is not even a,  
21 you know, material witness in Trooper 1's case. She has never  
22 met Trooper 1. So how much is the judge going to allow at  
23 trial to impeach a nonparty?

24 THE COURT: I don't think it is going to be a  
25 multi-day sideshow and the discovery issues alone have been

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1 multiple days, right.

2 MS. PERRY: Yes.

3 THE COURT: So it's really hard to figure out how to  
4 balance it. I understand --

5 MS. PERRY: At some point enough has to be enough.

6 MR. GLAVIN: And there's another aspect to this as  
7 well, Your Honor, with respect to Ms. Boylan and Trooper 1, is  
8 that somehow Ms. Boylan became aware of Trooper 1 before  
9 anyone else did, including Governor Cuomo.

10 She testified to OAG in May of 2021 that she was  
11 aware of a trooper. We want to capture and know how she  
12 became of Trooper 1 and what conversations --

13 MS. PERRY: Her request about that --

14 THE COURT: There is no request about that. That  
15 sounds like a deposition question if there is a deposition.  
16 You're not going to necessarily find a needle in the haystack.  
17 Some of the names you've mentioned today, folks, are the first  
18 time I'm hearing about them. I don't know if Ms. Perry is  
19 aware of all former employees that you think would be captured  
20 within this request. The request is not narrowly drawn. It  
21 is not drawn in such a fashion that I necessarily think it's  
22 getting you what you want. I think it's a blunderbuss, when  
23 you need a scalpel.

24 (Continued on next page.)

25

1 MS. GLAVIN: Okay. So, Your Honor, with respect to  
2 the name that you just heard for the first time, we actually  
3 referred to her and quoted it in our motion papers. We just  
4 did not use her name because it wasn't public

5 THE COURT: Fair enough.

6 MS. GLAVIN: But it is in our motion papers.

7 I think what we need to do, we're focused on the  
8 reach-out that Ms. Boylan was doing and that she testified to  
9 the AG's office about, the reach-out of contacting people on  
10 her LinkedIn or through Instagram or whatever means, but the  
11 reach-out that she was doing, because she was also reaching  
12 out because she wanted to put the Wigdor law firm in touch  
13 with other people and get them to speak to the Wigdor firm.

14 So we're very interested in that reach-out. We're  
15 very interested to threats that she made because we know that  
16 Ms. Boylan makes threats. And just on this whole point, like,  
17 honestly, Your Honor, the reason Ms. Boylan is fighting so  
18 hard to avoid the subpoena is because we are going to find a  
19 gold mine. I'm very confident of that because Ms. Boylan lied  
20 and she knows it.

21 And to the extent you're having the argument about  
22 public policy and weighing the back and forth, I think it's a  
23 very different case. Take the doctor who did the COVID tests  
24 on Government Cuomo. I think she has a much better argument  
25 about being a private citizen and not being bothered by this.

1 Ms. Boylan's problem is she made herself a public figure. She  
2 made herself the face of this. She ran a political campaign  
3 based on this. She has been part of a chapter of a book. She  
4 is repeatedly out there. She's tweeting about Janice Dean.

5 So to the extent that this idea that Ms. Boylan is  
6 some, trying to maintain her private life, all public tweets  
7 and commentary to the contrary, but it's an important point to  
8 make.

9 THE COURT: It is, I understand what you're saying,  
10 but the part of this issue that I think we really need to keep  
11 in mind is the proportionality concern. Right? Because at  
12 the end of the day, she is a non-party witness who, as  
13 Ms. Perry very eloquently articulated at the outset of this  
14 proceeding, chose not to file a lawsuit against Governor Cuomo  
15 because she did not want to walk into this circus and this  
16 type of situation and yet, she's being pulled here not even as  
17 a sideshow but in center stage. Right? And that is not  
18 proportionate to the needs of this case.

19 Trooper 1's claims are specific, they are narrow,  
20 and the way that the complaint is drawn is different, but  
21 Trooper 1, her actual claims are specific and limited. And  
22 the concern that, you know, I think we can all share is that  
23 this has become, you know, a high drop and there's like a  
24 million heads and every time we try to cut off a head, six  
25 more heads grow, and that's where the discovery problems lie.

1 The proportionality point is serious because you have insane  
2 amounts of cross-examination based upon your motion papers.

3 MS. GLAVIN: I have insane amounts?

4 THE COURT: Of cross-examination fodder based upon  
5 your motion papers. And at some point, enough is enough. You  
6 don't need all these extrinsic documents to do your cross.  
7 They're not coming in.

8 MS. GLAVIN: Her prior statements are going to come  
9 in.

10 THE COURT: You can cross her on them.

11 MS. GLAVIN: Yes.

12 THE COURT: You're not proving them up with  
13 extrinsic evidence.

14 MS. GLAVIN: No, because we think a lot of them are  
15 going to be false.

16 THE COURT: Maybe. A lot of the things you're  
17 seeking to explore are not going to be coming in extrinsically  
18 and you know it. You're looking at specific instances of  
19 untruthfulness. You're just looking under 608(b). You're not  
20 getting this in extrinsically. So what do you actually need?

21 MS. GLAVIN: We just propose this. So with  
22 respect -- limit the dates to January 2020 to the date of the  
23 subpoena which is March 2023.

24 THE COURT: And what you're concerned about  
25 primarily here is communication to file a complaint?

1 MS. GLAVIN: Yes. And to the extent, and the  
2 reach-out to other Executive Chamber employees asking people  
3 to come forward and any threats.

4 But one thing, Your Honor, I just have to respond  
5 to.

6 THE COURT: That's from the eyes of the beholder  
7 unfortunately. They're vague.

8 MS. GLAVIN: But we know she was doing it. It's  
9 very obvious. But, Your Honor --

10 THE COURT: How is one to search for threats?

11 MS. GLAVIN: Ms. Boylan, I think, has a pretty good  
12 idea of some of the things she said.

13 THE COURT: I'm sure they would not agree with you  
14 that some of these things are threats.

15 MS. GLAVIN: Okay.

16 One thing though I do have to say is as Ms. Boylan  
17 has a client and we are on the public record, I have a client  
18 too. And when you commented, Your Honor, about Ms. Perry  
19 eloquently relaying why Ms. Boylan did not sue Governor Cuomo,  
20 let's be quite clear. The reason that she did not sue  
21 Governor Cuomo is because it is a lie and she knows it.

22 THE COURT: You've made that point. Moving on.

23 MS. PERRY: Your Honor, can I make a proposal?

24 You know, we had, as Your Honor knows, one week ago  
25 a conference in front of Magistrate Judge Cave and what she

1 did was, in the first instance, ordered the production of  
2 communications between Ms. Boylan and Ms. Bennett and did say,  
3 as Your Honor has the transcript, you know, we'll see what  
4 happens with those documents and, you know, with the case, if  
5 issues are narrowed or if not, if something comes up, they can  
6 come back.

7           What I would propose, as Your Honor has already  
8 ruled, they can have the documents in request 1. There's  
9 also -- request 11 is communications with Governor Cuomo.  
10 Request 16 is videos, images and photographs of Governor Cuomo  
11 with Ms. Boylan. I think those will encompass the vast, a  
12 large universe of what they're looking for and, frankly, a lot  
13 of this other stuff, you know, will be subsumed, and perhaps  
14 that would be -- I mean if we were able to meet and confer  
15 productively, that's what I think we would offer and I think  
16 we'd capture a lot of this. A lot of these, as Your Honor has  
17 kind of previewed, a lot of this other stuff is just so out  
18 of, you know, just out of whack, but those at least would  
19 allow them to get a lot of what they're looking for, I think,  
20 and is the only real thing that has any relevance,  
21 proportionality to the allegations in this case.

22           So that's what I would offer. I mean, again, I do  
23 think, Your Honor, we talked about staging and, Your Honor, we  
24 talked about deposition being staged. I still think that this  
25 stuff should be staged because if the report comes out, you

1 know, then I think all of this would come out, but I  
2 understand Your Honor wants to move forward with this and is  
3 not allowing --

4 THE COURT: There's no motion to preclude the report  
5 and there won't be for who knows how long.

6 MS. PERRY: So that's what I would offer now. I  
7 think I know they're not going to, but I would ask that  
8 Your Honor rule to allow that. I think that gives them a  
9 tremendous amount. There are going to be a lot of documents  
10 that relate to Ms. Boylan's allegations of sexual harassment  
11 that relate to, you know, her communications with  
12 Governor Cuomo and, you know, and the like.

13 So that's what I would offer and I just think we get  
14 too sticky and in the weeds on all of these other, all of  
15 these other categories.

16 THE COURT: Ms. Glavin, what's your reaction to that  
17 proposal?

18 MS. GLAVIN: Your Honor, I don't agree with it.  
19 We're now -- the subpoena was served in March.

20 THE COURT: I'm aware.

21 MS. GLAVIN: This will then take -- we have not had  
22 productive meet-and-confers and I just want to get this over.

23 THE COURT: I know. We tried.

24 MS. GLAVIN: So I want to just continue item by  
25 item.



1 THE COURT: Okay. I unfortunately have zero faith  
2 there will be any productive value to any further  
3 meet-and-confers with any of the parties in this case so  
4 that's why we are here.

5 So moving right along, there's been a lot of talk  
6 about this Medium essay. The Medium essay is out there in the  
7 world. How on earth are documents including drafts and  
8 communications regarding it relevant and proportional?

9 MS. GLAVIN: We want the drafts because we believe  
10 that the story changed and what we have -- we've seen at least  
11 one text.

12 So you're looking at a time period, Your Honor, of  
13 February of 2021, and we see -- it was published on  
14 February 4, 2021. We think that Ms. Boylan engaged a  
15 consultant to write it for her and we want to see how the  
16 story morphed because we have seen Ms. Boylan reach out to  
17 another complainant about where a holiday party in 2016 was.

18 THE COURT: What is your evidence or good faith  
19 basis for the assertion that the story has changed?

20 MS. GLAVIN: Because it's changed throughout.

21 Ms. Boylan -- oh, my goodness. So Ms. Boylan had a  
22 recent tweet about how, I think she was talking about Alphonso  
23 David, the Governor's counsel, and how the governor, I think,  
24 slapped him on the back or the butt and she said, That's what  
25 happened to me all the time.

1           That's not true. That's the first time she ever  
2 said that. Her tweets about what was happening in the chamber  
3 over the last three years, they vary, absolutely.

4           THE COURT: That has nothing to do with the Medium  
5 article.

6           MS. GLAVIN: No. The Medium article is "My story of  
7 working with Governor Cuomo."

8           THE COURT: I'm aware. What is your basis or good  
9 basis that the Medium drafts changed? That was your  
10 assertion.

11           MS. GLAVIN: Yes, that because she reached out --  
12 she was talking about the holiday party. She didn't even  
13 remember where it was. She reached out to another complainant  
14 to ask where it was. And she portrays it in the Medium piece  
15 of having been seared into her brain.

16           The strip poker comment that she alleges for the  
17 first time in this, no one else corroborates. We want to know  
18 when all of a sudden, she first mentions that that happened.  
19 Not even Howard Zensky corroborated it. And Ms. Boylan didn't  
20 even remember Howard Zensky being on the plane, yet after she  
21 threatened to destroy his life, he's, like, Oh, I may remember  
22 something like that.

23           THE COURT: Ms. Perry, would you like to be heard  
24 regarding the Medium article?

25           MS. PERRY: Yes. It has nothing to do with

1 anything. I don't know what else to say. Nothing has  
2 anything to do with anything.

3 She has no evidence that it changed. None. So I  
4 mean, all of this -- I mean you keep going and it keeps, this  
5 is all going to be an impeachment trial of Lindsey Boylan when  
6 it's really about the very specific allegations that have been  
7 made by Trooper 1.

8 THE COURT: I understand the arguments on both  
9 sides.

10 With regard to item 7, the communication with Karen  
11 Hinton, time frame, please?

12 MS. GLAVIN: We think it's self-limiting because I  
13 don't think she was in touch with Karen Hinton until around  
14 February of 2021 after she published her Medium piece and then  
15 was in touch with her. Karen Hinton is a public, PR relations  
16 person and political consultant and Karen Hinton then comes  
17 forward I think several days after Ms. Boylan with her own  
18 claim for the very first time about Governor Cuomo, an  
19 incident with him in a hotel room back in, 20 years earlier.

20 THE COURT: I'm familiar with it, yes.

21 MS. GLAVIN: From what we have seen in the  
22 discovery, Ms. Hinton was organizing media appearances. She  
23 also was promoting her book. Ms. Boylan appears with her to  
24 help promote the book.

25 THE COURT: Time frame?

1 MS. GLAVIN: 2021 -- oh, December 2020 when Lindsey  
2 Boylan first made her allegations.

3 THE COURT: Until?

4 MS. GLAVIN: The date of the subpoena.

5 THE COURT: Have you received those communications  
6 already from Ms. Hinton? I know that Ms. Cohen has been  
7 working on that subpoena.

8 MS. GLAVIN: Yes. We have communications with  
9 Ms. Hinton, but we don't know if that's the extent of them or  
10 if she deleted them.

11 THE COURT: Ms. Hinton did provide her  
12 communications with Ms. Boylan.

13 MS. GLAVIN: Some.

14 THE COURT: Some.

15 MS. GLAVIN: So to the extent there are others,  
16 that's what we're looking for.

17 THE COURT: All right. Ms. Perry?

18 MS. PERRY: So Ms. Hinton is not featured in the  
19 complaint at all, didn't work for Governor Cuomo during this  
20 time, and from what I remember from Ms. Cohen's quashing  
21 papers, what she says is very different from what Ms. Glavin  
22 says. She says that the communications were supportive ones  
23 between two people who experienced something similar, not ones  
24 where Ms. Boylan is trying to ask someone to lie or, you know,  
25 make false allegations.

1           So very different. Nothing to do -- would not, you  
2 know, be impeachment material and, again, have nothing to do  
3 with the allegations here. So, again, bridge way, way, way,  
4 way too far.

5           THE COURT: Is there any suggestion that  
6 communications that you do have from Ms. Hinton's production  
7 touch upon the prior concerns that you raised, Ms. Glavin,  
8 vis-à-vis encouraging people to come forward, change stories,  
9 et cetera?

10           MS. GLAVIN: I actually don't remember. I haven't  
11 looked at those communications.

12           THE COURT: If they did, you would remember.

13           MS. GLAVIN: No, I actually -- I found them helpful  
14 because one -- one of the things that happened is Ms. Boylan  
15 in this timeline, Ms. Boylan writes her Medium essay. She  
16 publishes that in February 24th of 2021. And then Charlotte  
17 Bennett, I think, comes forward a day or two later.

18           At that point in time, Andrea Stewart-Cousins, who  
19 is the head of the Senate, said if one more woman comes  
20 forward, you know, it's a problem for the Governor. And then  
21 the very next day, Karen Hinton and Ana Liss come forward and  
22 we know that Ms. Boylan was in touch with Ana Liss.

23           We know part of the Governor's defense is these  
24 allegations -- and Ana Liss has basically said that, you know,  
25 I don't believe I was sexually harassed, I don't think the

1 Governor touched me inappropriately.

2 A lot of what she had to say in her deposition is  
3 hearsay. She also said in her deposition, and this is very  
4 important, is that Ms. Boylan was influencing her and she's  
5 also telling Ms. Liss lies to get her to come forward.  
6 Included amongst those lies is that Ms. Boylan was telling her  
7 falsely that Governor Cuomo was sleeping with Melissa DeRosa  
8 which was just not true. And Ms. Liss-Jackson was very clear  
9 in her testimony that she came forward because of this.

10 THE COURT: So the answer to my question as to  
11 whether or not Ms. Hinton's communications provided evidence  
12 to encourage Ms. Boylan to come forward is you don't know?

13 MS. GLAVIN: No, I actually think it was consistent  
14 with our theory. But I don't know -- the one thing I will  
15 tell Your Honor is I expected to see more communications and  
16 we don't know if Ms. Hinton deleted them. That's part of the  
17 problem that we're facing here, is that some of people deleted  
18 them. Trooper 1 deleted all of her text messages. And I also  
19 know that Ms. Boylan was using encrypted apps to communicate  
20 with people, using Signal, a self-deleting app, and they used  
21 Confide.

22 To the extent people don't have those  
23 communications, we want them from Ms. Boylan. I think  
24 Ms. Boylan, one of the reasons she has so many responsive  
25 documents is she saved everything.

1 MS. PERRY: Can we --

2 THE COURT: Ms. Perry?

3 MS. PERRY: Sorry. This continued character  
4 assassination, I mean Ms. Glavin knows this case in and out.  
5 I don't. I was here to move to quash a subpoena. So, you  
6 know, from what I've seen, what I recall, Ms. Cohen's papers  
7 say something very different. I believe she says no, this was  
8 just a supportive communication between two women.

9 I can't respond tit-for-tat for everything if she  
10 takes every opportunity to take potshots at Ms. Boylan and I  
11 don't think that's appropriate. That's not what we're trying  
12 to do here, I don't think. What we're trying to do is  
13 establish relevance, proportionality and burden.

14 So it's not really fair, I'm at a real disadvantage  
15 here, but I don't think it's true. I mean Ms. Liss'  
16 deposition, she has perspective as an advocate. I have a very  
17 different read of it. I don't think she was saying she was  
18 never, that there was no sexual harassment in that office.  
19 She has, I think Mr. Licul's characterization is a  
20 Mad Men-esque environment.

21 MR. LICUL: She testified that she was treated  
22 differently because she's a woman.

23 THE COURT: I've read the depositions.

24 MR. LICUL: That it was Mad Men-esque.

25 So those are fact questions.

1 THE COURT: But fact questions are for a jury. Her  
2 opinion --

3 MS. PERRY: I don't think it's fair.

4 THE COURT: Let's be really clear, Ms. Glavin. Her  
5 opinion as to whether certain things are or are not, you know,  
6 inducive or creative of a hostile work environment is a  
7 question of fact. Her legal conclusion is not for her to  
8 make. It's for the jury to decide if Ms. Liss is a witness.  
9 But we're not here to talk about that. What I'm trying to do  
10 is ascertain a date range for the communications with Karen  
11 Hinton and their relevancy and, instead, we're talking about  
12 17 other things. So I understand the arguments on both sides  
13 as they have been put forward.

14 Next group of documents. Document 9 describes  
15 fundraising or other communications on Ms. Boylan's campaign  
16 related to her allegations against Cuomo.

17 Any documents alleging allegations against Cuomo  
18 would be subsumed within document request one, correct?

19 Ms. Glavin?

20 MS. GLAVIN: As long as Ms. Perry agrees with me  
21 because I want, we want to capture that. And the reason the  
22 fundraising becomes important is because --

23 MS. PERRY: We've heard.

24 MS. GLAVIN: -- when Ms. Boylan announced her  
25 campaign for Manhattan Borough President, she was trying to



1 get matching funds.

2 THE COURT: I know.

3 MS. GLAVIN: And the matching funds are a function  
4 of how many donors you have. So as of December 4th, okay,  
5 which is the day before Ms. Boylan started making her  
6 allegations, she didn't have anywhere near the number of  
7 donors that she needed and she also was close to last in terms  
8 of fundraising for the Manhattan Borough President race.

9 One of our defenses is that Ms. Boylan made this  
10 stuff up, one, to get a fundraising boost, two, because she  
11 did not want to come out the true circumstances of why she  
12 left the Executive Chamber which would have been a killer to  
13 her campaign which is that she was, she resigned after being  
14 confronted with allegations of her balling and her abusive  
15 behavior and also she had two counseling meetings by the  
16 counsel to the Executive Chamber, Alphonso David, one in  
17 January 2018, about her having a sexual relationship, an  
18 allegation that had been raised about that, with her boss, and  
19 then also nine months later, again about the balling and the  
20 bad behavior and there had been plenty of complaints.

21 THE COURT: I'm very familiar with your relevancy  
22 arguments as to the campaign funds and the Executive Chamber  
23 allegations. You do not need to reiterate them. My question  
24 was very straightforward.

25 Ms. Perry, do you agree or disagree that the

1 documents regarding fundraising and other communications by  
2 Ms. Boylan's campaigns relating to her allegations against  
3 Cuomo are subsumed within document request one to some  
4 significant extent, if not entirely?

5 MS. PERRY: I mean we're going to produce documents  
6 that relate to allegations of sexual harassment and misconduct  
7 that she's made. I'm not sure what concerning fundraising. I  
8 mean she's not going to comb through her campaign records.

9 THE COURT: That's what they're seeking, yes.

10 MS. PERRY: I don't even know if she has her  
11 campaign records. I don't think she's kept them. So I don't  
12 think that's the body of documents that we've even gathered.

13 THE COURT: Okay. So if she does have her campaign  
14 records and contained therein include communications,  
15 communications by Ms. Boylan regarding her allegations against  
16 Cuomo, wouldn't those be included in your production under  
17 document request one?

18 MS. PERRY: What -- well, let me, I guess, take a  
19 step backwards.

20 To the extent she made public statements, they have  
21 those.

22 THE COURT: I agree.

23 MS. PERRY: So what more do they need? I mean if  
24 she has internal documents that were within the now defunct  
25 campaign, is she supposed to get them from whoever the

1 repository is or campaign treasurer, whatever, and sift  
2 through those as well?

3 THE COURT: There's a subpoena for "Lindsey for  
4 New York."

5 MS. PERRY: We haven't gotten there. I guess that's  
6 a separate -- I don't even know who the, who that would be.

7 THE COURT: So my question to you is more narrow  
8 which is really simply if she has the records relating to her  
9 fundraising --

10 MS. PERRY: Yes.

11 THE COURT: -- or other communications by her  
12 campaign that touch upon her allegations against Cuomo, would  
13 those be included within the request?

14 MS. PERRY: Yes, Your Honor. If she has them, yes.

15 THE COURT: So if that is the case, Ms. Glavin, the  
16 proportionality of requests 8 through 15 -- 8 not through 15  
17 because I do agree with Ms. Perry as to 11. It does seem  
18 relevant and proportional. I do want to establish a time  
19 frame for it. But other than 11, 8 through 15 really do seem  
20 to lack proportionality at this stage of the case.

21 Is there anything specific you would like to be  
22 heard on?

23 MS. GLAVIN: Yes.

24 THE COURT: That is my preliminary assessment based  
25 upon everything that I've read.

1 MS. GLAVIN: Yes, Your Honor.

2 One thing on 7. I want to clarify the record with  
3 respect to communications with Karen Hinton. And Ms. Cohen  
4 marked, designated confidential a couple of text messages. I  
5 don't think that they are confidential. I would like to tell  
6 the Court about those text messages but I don't want to get in  
7 trouble, no. Basically the text messages, they're talking  
8 about what they told investigators, she and Ms. Hinton.

9 THE COURT: I understand. Ms. Hinton is in the  
10 past.

11 MS. GLAVIN: Okay.

12 THE COURT: Now we're looking at document request 8,  
13 9, 10, 12, 13, 14 and 15.

14 MS. GLAVIN: Okay. With respect to 8, it could not  
15 be more relevant.

16 Ms. Boylan was asked about her relationship with  
17 Howard Zemsky by the AG's Office and she perjured herself and  
18 it goes directly to why Ms. Boylan left ESD. It goes directly  
19 to -- she writes in her Medium piece, the February 24, 2021  
20 Medium piece that her boss, that would be Howard Zemsky,  
21 commented to Lindsey that Governor Cuomo had a crush on me.

22 THE COURT: Pause.

23 MS. GLAVIN: Yes.

24 THE COURT: The factual predication for the  
25 relevancy is not my question.

1 MS. GLAVIN: No.

2 THE COURT: My question goes to proportionality.

3 MS. GLAVIN: Okay.

4 THE COURT: Because at the end of the day, as we've  
5 been discussing at length, this is all basically impeachment  
6 material and you have ample good faith basis to cross-examine  
7 her on a myriad of these topics. It's apparent from your  
8 papers.

9 So what additional affirmative proof do you actually  
10 need? Because it's not admissible under 608(b) and you know  
11 it. So getting a document --

12 MS. GLAVIN: Unless it's a prior inconsistent  
13 statement that's documented or it's admissible for the fact  
14 that it was said, not for the truth of the assertion.

15 THE COURT: So what are you actually looking for?  
16 Because any and all communications regarding an alleged prior  
17 sexual relationship is so problematic and overbroad, it's not  
18 even funny.

19 MS. GLAVIN: If Ms. Boylan is prepared, you know, in  
20 her deposition to answer truthfully the question -- I mean is  
21 Ms. Perry going to make a representation? Because it goes to  
22 why she threatened Howard Zensky on a self-deleting app, a  
23 witness in the case, to get him to change his story. And she  
24 lied to the AG's Office about it.

25 It goes exactly to why she left the Empire State

1 Development Corp., why she resigned. She told the world  
2 repeatedly that she resigned because the Governor sexually  
3 harassed her for years and people watched and did nothing  
4 about it.

5 THE COURT: They often have mixed motives.

6 Ms. Perry, do you have a reaction to all of this?

7 MS. PERRY: I think I was very clear in our papers.  
8 I think it's totally inappropriate and totally  
9 disproportionate. I couldn't agree -- I mean I agree with  
10 Your Honor, I think this is --

11 THE COURT: Mr. Licul is itching to say something.

12 MR. LICUL: Yes. I would just add that that also is  
13 prior sexual conduct, sexual history, that's barred by 412.

14 THE COURT: Right. And I'm certainly cognizant of  
15 your motion to quash at ECF 82 trying to address Ms. Perry's  
16 arguments and then I wanted to go back to you to see if there  
17 was anything else you wanted to add vis-à-vis the Rule 412  
18 arguments which I do understand.

19 So, preliminarily, at this point, I understand the  
20 arguments as briefed as to the document subpoena items listed  
21 at 8, 9, 10, 12, 13, 14, 15. I do have some skepticism that  
22 they are proportional to the needs of the case but, at the  
23 same time, I also recognize that they may be become more  
24 proportional depending upon how the discovery plays out.

25 With regard to 11 and 16, however, Ms. Perry, you

1 previously posited that those may be relevant and  
2 proportional.

3 Would you like to be heard further on 11 and 16,  
4 Ms. Perry?

5 MS. PERRY: Yes, Your Honor.

6 Consistent -- I don't believe that they are, but  
7 consistent with Your Honor's ruling with respect to document  
8 request one, I would think that -- I'm not going to make too  
9 strenuous of an argument with respect to those.

10 THE COURT: Thank you.

11 MS. GLAVIN: Your Honor, just --

12 THE COURT: But to you, Ms. Glavin, time frame.

13 MS. PERRY: Your Honor, I guess that -- since it's  
14 all communications, I guess, while they were working together,  
15 I don't think she has many from the time she worked there, so  
16 I guess that's, that's my only caveat there.

17 MS. GLAVIN: Okay. Just one last point with respect  
18 to 8, Your Honor.

19 THE COURT: Uh-huh.

20 MS. GLAVIN: With respect to Howard Zemsky. We also  
21 want any communications she had with him concerning the  
22 Governor because she cites to Howard Zemsky as a corroborating  
23 witness.

24 THE COURT: I understand the argument.

25 MS. GLAVIN: Okay.

1 THE COURT: Time frame on 11 through 16, please.

2 MS. GLAVIN: Okay. With respect to 11, I'm assuming  
3 she doesn't have a lot of these, but that's one of the reasons  
4 why we subpoenaed ESD, but to the extent she had them, you  
5 know, she has them, we would like them.

6 And, I don't know, I mean does she have any?

7 MS. PERRY: I mean I don't believe she does.

8 MS. GLAVIN: Okay.

9 MS. PERRY: But --

10 THE COURT: But I suspect she does have some videos?

11 MS. PERRY: She might.

12 THE COURT: All right. So that is the 16 items  
13 included in the Boylan document subpoena.

14 Your motion also touched upon the Zemsky subpoena,  
15 Ms. Perry. Some of these are duplicative of the items that  
16 we've already discussed. One through 5, for example, are  
17 things we've largely discussed.

18 Is there anything else you would like to add with  
19 regard to 1 through 5, Ms. Perry?

20 MS. PERRY: No, Your Honor. I really don't want to  
21 belabor the point. I know Your Honor has heard it many times.  
22 So I do think those, the subpoenas on which we've already  
23 moved additional non-party subpoenas, I do think Your Honor  
24 has argument and has understood them. So unless Your Honor  
25 has specific questions, I don't want to figure out --



1 THE COURT: I don't have questions about 1 through 5  
2 although I suspect Ms. Glavin would like to argue about them.

3 MS. PERRY: I mean if --

4 MS. GLAVIN: I thought we had moved --

5 THE COURT: This is the Zemsky subpoena.

6 MS. GLAVIN: Oh, the Zemsky subpoena? Hold on.

7 MS. PERRY: I may come back if she does but I do  
8 think that, you know -- if she comes back and says the same  
9 exact things about how she's a liar and adulterer and, you  
10 know, all these things, I probably will have to say something.

11 THE COURT: So I would like you to just focus your  
12 arguments on proportionality here with regards to document  
13 requests 1 through 5 as to Mr. Zemsky.

14 MS. GLAVIN: I'm guessing he doesn't have much.

15 So with respect to number 1, the reason we're asking  
16 for that is because she threatened him when he, you know,  
17 denied, didn't corroborate her the way she wanted to, so any  
18 communications about that. And I think that would be  
19 self-limiting, time frame, February 2021.

20 With respect --

21 THE COURT: Isn't document 1 request as to  
22 Mr. Zemsky specific to the Medium essay?

23 MS. GLAVIN: Yes.

24 THE COURT: Go ahead.

25 MS. GLAVIN: But it's concerning her essay. We

1 believe that after -- she published this essay. Either the  
2 same day or next day, a statement was issued from the  
3 Executive Chamber that Howard Zemsky signed on to that he  
4 never heard any such comment on a plane. And the same day,  
5 Ms. Boylan sent him in the self-deleting app: I can't wait to  
6 destroy your life. You're a shit follower.

7 THE COURT: Do you have that text?

8 MS. GLAVIN: I do not have that text and Mr. Zemsky  
9 doesn't have that text, but we're curious if Ms. Boylan has  
10 it.

11 THE COURT: Ms. Perry, do you know if she has it?

12 MS. PERRY: I don't know that this happened. It's,  
13 by definition, a self-deleting text. I don't know why  
14 Ms. Glavin believes this happened. She certainly repeated  
15 this allegation time and time again.

16 So I don't, I don't -- she certainly is not agreeing  
17 that this happened and by mere repetition, I'm not convinced  
18 that it has happened so no.

19 MS. GLAVIN: Mr. Zemsky testified to this under  
20 oath.

21 THE COURT: I understand that but if it's  
22 self-deleting, it's self-deleting. I can't order anybody to  
23 produce it.

24 MS. GLAVIN: Agreed. If she doesn't have it, she  
25 doesn't have it.

1 THE COURT: Well, this is Mr. Zemsky. He already  
2 said he doesn't have it, correct?

3 MS. GLAVIN: Yes, but to the extent Ms. Boylan had  
4 any other communications with him about that Medium piece  
5 where she cites to Mr. Zemsky, yes, we would like that.

6 THE COURT: Okay. Any other arguments as to 2  
7 through 5?

8 MS. GLAVIN: Yes. With respect to number 2 again,  
9 Ms. Boylan cites to Mr. Zemsky in her Medium piece as  
10 corroborating her. So to the extent that she had any  
11 communications with Howard Zemsky regarding misconduct by  
12 Governor Cuomo, this is her boss, does Mr. Zemsky still have  
13 these? I don't know, and it may very well just be in ESD  
14 e-mails if there's anything responsive.

15 THE COURT: Okay.

16 MS. GLAVIN: With respect to number 3, Mr. Zemsky  
17 testified -- well, he told the OAG they didn't ask about  
18 everything he told them in the formal interview, but that --

19 MS. PERRY: Your Honor, may I be heard on this  
20 perhaps at sidebar? I don't know what Ms. Glavin is about to  
21 say but if it's about something that was redacted in the  
22 publicly filed deposition, I would ask that she not speak  
23 about this publicly.

24 THE COURT: You may approach.

25 MS. PERRY: I don't know what you are going to say.

1 MS. GLAVIN: I'm actually referring to Howard  
2 Zemsky's interview memo which we were provided in discovery.

3 MS. PERRY: As long as you're not going to speak  
4 about something that was redacted from the interview memo.

5 MS. GLAVIN: She wasn't asked about it -- no, it  
6 wasn't redacted in the interview memo.

7 MS. PERRY: Okay. Then no.

8 THE COURT: Okay. Go ahead.

9 MS. GLAVIN: Mr. Zemsky testified that when -- one,  
10 we want the meeting with Alphonso David, counsel to the  
11 Executive Chamber, on January 18th, about any communications  
12 he and Ms. Boylan had around that meeting because they both  
13 essentially agreed to lie to Alphonso David. And it goes to,  
14 one, it goes to Ms. Boylan's credibility; two, it goes to why  
15 she left the chamber; three, it goes to when she's saying  
16 Mr. Zemsky is going to corroborate some of this.

17 THE COURT: Your basis for saying that they  
18 basically agreed to lie is which --

19 MS. GLAVIN: Howard Zemsky's interview memo.

20 THE COURT: The interview memo from the OAG?

21 MS. GLAVIN: Yes.

22 THE COURT: So you already have it.

23 MS. GLAVIN: I have the interview memo.

24 THE COURT: Right.

25 MS. GLAVIN: I'd like to see if there are any

1 documents or communications because we already know that  
2 Ms. Boylan is taking issue with things Mr. Zemsky said  
3 happened.

4 THE COURT: Okay. Mr. Zemsky is obviously not here.  
5 Number 4 and number 5?

6 MS. GLAVIN: Number 4? Yes, number 4. Again, I  
7 don't know that Mr. Zemsky is going to have anything. He's  
8 been not working for the State for some period of time, but to  
9 the extent it goes to the complaints about Ms. Boylan's  
10 conduct, it's the reason why she left ESD. We're very focused  
11 on that, when she told the world she left for one reason and  
12 there was another reason and the truth was something else.

13 Number 5, the contribution to her campaign.  
14 Mr. Zemsky, his wife, his daughter were contributors to  
15 Ms. Boylan's campaign. We are interested to see what  
16 Ms. Boylan said and asked Mr. Zemsky to get him to contribute  
17 to her campaign.

18 THE COURT: Ms. Perry, do you want to say anything  
19 in regards to these topics? I understand, obviously,  
20 Mr. Zemsky is not here. I have no idea what views he has on  
21 these issues and/or what his position will ultimately be, but  
22 why is Ms. Boylan seeking to quash these five items?

23 MS. PERRY: Well, she certainly has a privacy  
24 interest here and we've just spent a lot of time going through  
25 the invasion of Ms. Boylan's privacy and relevance,

1 proportionality, all of those things with respect to the  
2 subpoena on Ms. Boylan. Now we're going out in concentric  
3 circles, people who were in Ms. Boylan's orbit, and they are  
4 incredibly invasive.

5           You know, Your Honor, you know, in talking about  
6 proportionality and talking about what they need to impeach  
7 her motives and her credibility, this is the definition of, of  
8 excess. It truly is. They already have so much. They keep  
9 touting how much they have to impeach Lindsey Boylan. Over  
10 and over and over and over, ad nauseam, we hear about it.

11           So they have to impeach, they have to impeach her  
12 through the issuance of 13, 14 subpoenas? Again, I've lost  
13 count. And they have to keep going to people who she knows  
14 some of them vaguely, some of them, you know, as her  
15 supervisors, her bosses, people who she supervised? At what  
16 point is enough enough? I really think we have reached it  
17 with the subpoena to Ms. Boylan, yes, but this, I mean I, I'm,  
18 this rarely happens but I truly am at a loss for words.

19           THE COURT: Mr. Licul, this subpoena was also a  
20 topic of your motion seeking to quash it in part, at least,  
21 under Rule 412. Would you like to be heard on this one?

22           MR. LICUL: I don't want to repeat what's in my  
23 papers.

24           I will just add that I concur with Ms. Perry and  
25 that is that we are going around in concentric circles. I

1 think the Court has the authority to quash if it feels that  
2 the purpose here is to harass some of these witnesses. I  
3 think it's pretty clear that that's the purpose. We know that  
4 because the Cuomo camp said it: If you come after us, we're  
5 going to file perjury charges and we're going to file ethics  
6 charges. And this is sort of the equivalent.

7           Anyway, I do think that -- I don't, again, I don't  
8 have anything else to say on 412. I think all of this stems  
9 from some belief that there's a conspiracy because Ms. Boylan  
10 had a relationship with Mr. Zemsky and she got him to lie,  
11 none of which is corroborated at all and we're so far afield,  
12 that it's ridiculous.

13           THE COURT: Okay. Thank you for that.

14           MS. CASSIDY: Your Honor?

15           THE COURT: Who said that?

16           MS. CASSIDY: Kathleen Cassidy on behalf of Melissa  
17 DeRosa and Rich Azzopardi.

18           THE COURT: Yes.

19           MS. CASSIDY: So with respect to our clients, we had  
20 served a very narrowly tailored subpoena to Ms. Perry for  
21 documents from Ms. Boylan really focused on documents that  
22 were communications with or about our clients specifically.

23           We did not have a chance to finish the  
24 meet-and-confer process with Ms. Perry because of the position  
25 that we are in this case, having, we had decided last time

1 that we would kind of hold in abeyance our subpoenas, but to  
2 the extent that the Court is going to enter an order, I think  
3 some of our requests will be subsumed within Governor Cuomo's,  
4 but we would ask that Ms. Boylan be requested to search for  
5 documents, the documents that are listed in our narrow  
6 subpoena.

7 THE COURT: I'm very aware of your subpoena and your  
8 documents are filed at ECF 154. We're still in the middle of  
9 her motion to quash. So do you need to leave?

10 MS. CASSIDY: No.

11 THE COURT: So sit tight.

12 All right. Ms. Perry -- I'm sorry. Back to you,  
13 Ms. Glavin.

14 MS. GLAVIN: Yes.

15 THE COURT: I don't know if there's anything you  
16 would like to say in response with regard to items 1 through 5  
17 on the Zemsky subpoena, but I do want to ask as to item 6 --

18 MS. GLAVIN: Yes.

19 THE COURT: -- on the Zemsky subpoena, do you  
20 already have documents, communications regarding the OAG  
21 investigation report, et cetera, and the documents Mr. Zemsky  
22 provided to the OAG or no?

23 MS. GLAVIN: No, we don't. We have not served the  
24 subpoena because of the objection. We'd like to serve the  
25 subpoena and it may be that Mr. Zemsky doesn't have anything.



1 THE COURT: Right.

2 MS. GLAVIN: But we haven't been able to have that  
3 conversation.

4 I do though, you know, I want to respond with  
5 respect to item 6 on this. It also becomes very important  
6 because Mr. Zemsky said something entirely different to the  
7 OAG than what Ms. Boylan testified to and Ms. Boylan has  
8 become aware of it because we made a submission to the  
9 Attorney General in October of 2020 asking -- October of 2021  
10 asking the Attorney General to amend, correct and supplement  
11 the report.

12 To the extent there are communications where  
13 Ms. Boylan is angry about what Mr. Zemsky said, you know, or  
14 disagrees with it or he tells her that, you know, heads up,  
15 I'm going to tell the truth, we want to know about that,  
16 particularly after, you know, the testimony was released and  
17 after we got discovery from the Albany County District  
18 Attorney's Office.

19 With respect, I just do want to respond --

20 THE COURT: If I were inclined, I'm not saying I am  
21 necessarily inclined, but if I were inclined to tailor the  
22 Zemsky subpoena in some fashion, what would be the time frame  
23 for communications between Ms. Zemsky and Ms. Boylan that you  
24 would want?

25 MS. GLAVIN: I would certainly want, well, one,

1 during the time they worked together, if he has any of those  
2 communications. I'm guessing he doesn't but he might, so  
3 during the time that they worked together because Ms. Boylan  
4 cites to Mr. Zemsky as a corroborating witness.

5 THE COURT: Their working is also totally, totally  
6 far afield. I mean that's just beyond the pale.

7 So communications regarding allegations of sexual  
8 misconduct, sexual harassment and other misconduct is one  
9 thing.

10 MS. GLAVIN: Yes.

11 THE COURT: Day-to-day operational work e-mails is,  
12 like, useless.

13 MS. GLAVIN: Agreed.

14 THE COURT: So I need a time frame.

15 MS. GLAVIN: Agreed. So the time frame has to be,  
16 A, when they were working together. So she worked with him  
17 2014 to 2018. So anything concerning allegations or  
18 misconduct about Governor Cuomo. And then secondly, we are  
19 very interested in the time period after Ms. Boylan came  
20 public, we would say March 20th to February of 2022.

21 THE COURT: Okay.

22 MS. GLAVIN: And also with respect -- I have to  
23 lodge this objection, Your Honor. It's just -- the law is  
24 that Ms. Boylan does not have standing. It is very, very  
25 clear that she does not have standing to object to the

1 subpoena to Mr. Zemsky and this hasn't even been served. We  
2 would like to just serve the subpoena and start the process  
3 but Ms. Boylan has objected to that. I take issue with the  
4 fact that we did not serve the subpoena and Ms. Trzaskoma and  
5 I went back and forth on this. I think we just serve the  
6 subpoenas and start the process.

7           The same with ESD. The subpoena hasn't been served  
8 on ESD because of her objections. I'd like to serve it on  
9 ESD, who is represented by counsel, Boyd Johnson at Wilmer  
10 Hale, and I'd like to start engaging Mr. Johnson because I  
11 think we will narrow it.

12           THE COURT: And I think he's probably going to say  
13 sovereign immunity like all of your other friends in State  
14 government.

15           MS. GLAVIN: No, actually it's amazing. The only  
16 person claiming sovereign immunity is Letitia James. The  
17 Executive Chamber has produced a lot of documents to us. The  
18 only category they have not produced because they've been  
19 waiting on this is Lindsey Boylan related documents.

20           THE COURT: That is the topic of the next topic, the  
21 Executive Chamber subpoena. So can that subpoena be narrowed?

22           MS. GLAVIN: They've already been produced. The  
23 only thing that they didn't produce --

24           THE COURT: I want to just clarify precisely what is  
25 still pending with regard to the Executive Chamber subpoena.

1           Mr. Licul had included it in his motion, in part.  
2           Ms. Perry had included it in hers. So I just want to  
3           understand what category, like, if you have them by request  
4           number, the items that they have not yet reached, that will  
5           certainly streamline the conversation about that subpoena.

6           MS. GLAVIN: Sure.

7           THE COURT: Is it 8, Category 8th?

8           MS. GLAVIN: Let me just take a look.

9           THE COURT: Category 7. Category 6, 7 and 8?

10          MS. GLAVIN: Anything related to Boylan. It was  
11          anything related to Boylan.

12          THE COURT: So 5 up to 9. Quite a lot, actually.

13          MS. GLAVIN: Yes.

14          THE COURT: Five and up, it looks like.

15          MS. GLAVIN: Yes. And the Executive Chamber,  
16          counsel of the Chamber has been very cooperative with us on  
17          producing documents and they did not raise sovereign immunity.  
18          That is Letitia James.

19          THE COURT: Did they produce communications between  
20          Ms. Boylan and Governor Cuomo or no?

21          MS. GLAVIN: No.

22          THE COURT: Okay.

23          MS. GLAVIN: Your Honor, that's why we want to serve  
24          ESD. I am not certain that the Chamber would necessarily have  
25          those because I don't know on what servers --

1 THE COURT: I understand.

2 MS. GLAVIN: -- are e-mails.

3 THE COURT: So Ms. Perry, do you want to be heard on  
4 Ms. Glavin's assertion that you don't have standing to  
5 challenge these subpoenas?

6 MS. PERRY: Your Honor, we briefed this. We cited a  
7 number of cases in this District and the Circuit that says  
8 that we do have a legitimate privacy interest. It's hard to  
9 imagine a greater privacy interest than in personnel files,  
10 and in sexual relationships.

11 So I mean I can -- you have our papers, but courts  
12 in the Second Circuit have recognized numerous privacy  
13 interests that give a party standing to challenge a subpoena  
14 issued to a non-party. I'm not sure why they believe we don't  
15 given the very clear case law. So, and, and they've properly  
16 stood by while this issue has been pending. I don't know what  
17 more to say other than what I've said and Your Honor can read  
18 the case law just as I have. I think it's pretty clear cut.

19 THE COURT: Absolutely. I just want to give you the  
20 opportunity to respond.

21 MS. PERRY: Yes. I have nothing more to say because  
22 they're not citing any case law.

23 MS. GLAVIN: But on the issue, Ms. Perry, and the  
24 cases that are cited, Your Honor, these are public agencies  
25 that we're subpoenaing these records for and the

1 communications.

2 To the extent Ms. Boylan -- there's no privacy  
3 interest in what she -- if she's communicating on a work  
4 computer and work servers, the privacy interest just isn't  
5 there.

6 MS. PERRY: Well, first of all, Mr. Zemsky is not  
7 obviously a State entity. You subpoenaed him in his  
8 individual capacity. And e-mail aside, you're also asking for  
9 personnel files. Those I think there are legitimate privacy  
10 interests and the courts have so found.

11 Whether they're a private entity or a public entity,  
12 her personnel files including, you know, whether there were  
13 personnel issues, of course there are privacy interests in  
14 that. I mean, of course, you guys have already, you know, put  
15 that all out there and the AG's Office has found those  
16 inappropriate and retaliatory but, regardless, she still has a  
17 very clear, very real privacy interest in those documents and  
18 that is exactly why we have standing.

19 MS. GLAVIN: Your Honor, personnel files in a sexual  
20 harassment case could not be more relevant.

21 With respect to -- and I have to respond to this and  
22 it's, like, it's, like, paining me, but on that front, her  
23 personnel files were not released. There were three memos  
24 that were released detailing the circumstances, the truthful  
25 circumstances of Ms. Boylan's decision to leave State

1 employment and then, four days later, try and get her job  
2 back, all of it was documented, and it was simply released to  
3 correct the record from what Ms. Boylan was publicly saying.

4 MS. PERRY: That's not accurate. That's not  
5 accurate.

6 MS. GLAVIN: Let me finish.

7 MS. PERRY: You don't have to finish when you're  
8 dragging her through the mud.

9 MS. GLAVIN: Your Honor?

10 MS. PERRY: You don't have to.

11 MS. GLAVIN: Your Honor?

12 MS. PERRY: It's not relevant.

13 MS. GLAVIN: Your Honor, Ms. Boylan has dragged  
14 Governor Cuomo through the mud for three years. She continues  
15 to do so and she continues to tweet to this day. I am sick  
16 and tired of hearing that Ms. Boylan is a victim.

17 Governor Cuomo has had false sexual harassment  
18 allegations by Lindsey Boylan that has gone on for years. He  
19 has never had an opportunity to test them. There are now 36  
20 mentions of Lindsey Boylan in a federal lawsuit. He has to  
21 test them.

22 MS. PERRY: Your Honor, this is not his opportunity  
23 to test them. This is brought by Trooper 1. That's exactly  
24 the problem.

25 THE COURT: I wish that were true, Ms. Perry. I

1 have made it so clear at so many conferences that I question  
2 the strategy here in terms of having all of these complaints  
3 included in the case. It's not my call.

4 MR. LICUL: Your Honor --

5 THE COURT: Mr. Licul --

6 MR. LICUL: If I may be heard on that. I just --

7 THE COURT: Mr. Licul, I'm not finished.

8 That's where we are. And I'm not in any way  
9 faulting Mr. Licul and his strategy. He's shared his views as  
10 to the Second Circuit's Perry case and the manner in which he  
11 chooses to prove a hostile environment is ultimately up to him  
12 depending upon the in limine rulings that precede the trial.

13 At this juncture, discovery is broader than the  
14 evidence that will come in at trial and the court --  
15 Governor Cuomo, Mr. Cuomo, former Governor Cuomo has to have  
16 an opportunity to find the evidence necessary to defend his  
17 case.

18 Mr. Licul, I want to be clear. I'm not critiquing  
19 your strategy choices. What I've said on the record and what  
20 I will say again is that survivors of sexual harassment being  
21 retraumatized through a discovery process is difficult for  
22 them and I'm trying to minimize the additional damage by  
23 trying to narrow this as much as possible but it's very  
24 difficult given the way that the complaint is drawn.

25 Again, Old Chief is my favorite case. I think I've



1 shared that with you in the past. It's a really important  
2 case and it is what sets a playback for trial lawyers. Right?  
3 You get to tell your story and how you choose to tell it and I  
4 respect those choices, but I also really want to reiterate my  
5 concerns about the survivors --

6 MR. LICUL: May I be heard?

7 THE COURT: -- and individuals who say that they  
8 were injured.

9 MR. LICUL: May I be heard?

10 THE COURT: Yes.

11 MR. LICUL: Trooper 1 is a victim and survivor as  
12 well.

13 THE COURT: Of course.

14 MR. LICUL: And it becomes very difficult for her to  
15 have folks suggest that somehow this is her fault.

16 She is entitled to prove her case, she's entitled  
17 under the law to anticipate the defenses, and what we've heard  
18 for the first time today, I did not know this, but,  
19 apparently, whether we included Ms. Boylan in the complaint or  
20 not or whether we chose to do what Charlotte Bennett did which  
21 is to say they won't call her, they're calling her anyway and  
22 I think that -- and we even proffered a way to limit that and  
23 they refused. Okay? So I think that there needs to be some  
24 balance when we're talking about why this is broad in not  
25 suggesting that we're somehow overreaching. Okay?

1           We've thought very carefully about this and we  
2 understand his defense. His defense is going to be either, A,  
3 these people are out to get me, sort of several conspiracies  
4 happening at once that converge into one big conspiracy and  
5 resignation, and, two, you misinterpreted what I did and what  
6 I said. And I don't know how to defend against that  
7 defense --

8           THE COURT: I understand.

9           MR. LICUL: -- without -- if a jury sits there and  
10 hears this is what happened, I brushed up against her,  
11 Trooper 1, and it was a mistake, and then you hear that he did  
12 the same thing to numerous other women, that's not a fair  
13 trial if a jury doesn't get to hear that.

14           As far as the report goes, my view on the report, I  
15 know we have many different views, we have five lawyers and 18  
16 opinions, but not only is it admissible as a public report, it  
17 is an admission of liability by one of the defendants. The  
18 New York State Police is a defendant here. It is an agency of  
19 the State and it has admitted that Trooper 1 was the victim of  
20 discrimination and sexual harassment. It's important  
21 evidence.

22           Now, getting back to the 412 issue, I didn't mean to  
23 go too far afield.

24           THE COURT: Yes.

25           MR. LICUL: The 412 issue is very clear concerning

1 sexual misconduct. The personnel file issue is also very  
2 clear. I'm not sure what cases they're talking about.

3 THE COURT: I also --

4 MR. LICUL: The cases are clear that personnel  
5 records, prior personal records are confidential and I think  
6 that, I don't want to say, I don't want to speak in absolutes  
7 because I always get in trouble when I do that, but virtually  
8 every case that I'm aware of says that the employee has a  
9 privacy right in his or her prior personnel records. I don't  
10 know what cases say the opposite. They're not public records.  
11 And just for the record, the memos that Ms. Glavin referred to  
12 were stamped "confidential personnel file" or something like  
13 that. It's clear that they're confidential.

14 MS. GLAVIN: Can I respond to Mr. Licul?

15 THE COURT: Please try to keep it --

16 MS. GLAVIN: My good colleague across the floor who  
17 is smiling at me for the record. Your Honor, a couple of  
18 things.

19 Number one, about Trooper 1, the Governor didn't  
20 sexually harass her, period, did not sexually harass her.  
21 That will be the evidence. And the reason that all of these  
22 other documents and all of these other people become relevant  
23 is because Mr. Licul has already said repeatedly he's going to  
24 put in the Attorney General's report which was a sham and a  
25 farce and a political document. Okay? We are going to

1 challenge it but I have to be able to get the evidence to be  
2 able to do that. That's number one. So his choice is on the  
3 report.

4 Number two, he included ten other people in the  
5 complaint and the reason he included ten other people in the  
6 complaint is that Trooper 1's allegations standing alone are  
7 not sexual harassment. So he's doing it, to me, clearly, for  
8 a prejudice issue, but you brought all of this into the case.  
9 Trooper 1 made a decision to do this.

10 I do not believe that Trooper 1, quote, unquote --  
11 Your Honor, I have to be heard on this because Your Honor made  
12 a comment too and I have to comment on it.

13 You called Trooper 1 a survivor and I hope  
14 Your Honor has not prejudged this case.

15 THE COURT: I have not prejudged this case but I  
16 have certainly believe that people who come forward with  
17 regard to allegations of mistreatment, misconduct, sexual  
18 harassment, sexual abuse, things along those lines, are  
19 entitled to respect and are entitled to being treated with  
20 humanity.

21 MS. GLAVIN: I agree.

22 THE COURT: And much of what has been said in this  
23 litigation is disgusting.

24 MS. GLAVIN: I disagree.

25 THE COURT: And I am troubled by the tone that

1 today's conversation has taken on both sides, and we need to  
2 turn it around and we need to focus on why we are here which  
3 is an effort to narrow these subpoenas.

4 As we said at the outset, Ms. Boylan is a non party  
5 to this case. I don't know how many subpoenas are pending  
6 about her in the world. Before me today, we have many  
7 subpoenas that she has moved to quash or that Mr. Licul has  
8 raised as issues with regard to needing to quash and any  
9 comments that I make about folks as survivors or victims is,  
10 frankly, based upon my history of working with survivors and  
11 victims and my preference to call victims "survivors." It's  
12 not a prejudgment that they were, in fact, abused. It's a  
13 point of reference. Instead of calling people victims and  
14 characterizing them as in some way weakened by that, I choose  
15 to use the more heartening term "survivors" based on my decade  
16 or so of working with people who had been sexually abused,  
17 many of whom were human-trafficked.

18 MS. GLAVIN: I understand.

19 THE COURT: So just to be clear, my use of words in  
20 determining to use the word "survivor" is a replacement for  
21 the word "victim." These people are complainants, victims,  
22 whatever you want to call it, that's how they are  
23 characterized in OAG report. I understand that that may be  
24 loaded and may, to you, suggest a factual determination by me.  
25 It does not. It's merely an effort to identify the group of

1 people we're talking about.

2 MS. GLAVIN: I understand that. I believe they're  
3 witness, Your Honor, and --

4 THE COURT: But there are so many witnesses we need  
5 to wade through. We can call them "complainants."

6 MS. GLAVIN: "Complainants." Let's call them  
7 "complainants."

8 THE COURT: We will all call them "complainants."

9 MS. GLAVIN: My client has been prejudged from day  
10 one by the media and by the press.

11 THE COURT: Not by me.

12 MS. GLAVIN: And it caused him to leave office  
13 because of the prejudgment.

14 He is now being sued in two different lawsuits and  
15 he may be sued in a third one in Albany. He needs to be able  
16 to defend himself. He has a right to due process and to the  
17 extent that Trooper 1 has included in her complaint everyone  
18 under the sun and the kitchen sink, we have to get discovery  
19 and to the extent --

20 THE COURT: Ms. Glavin --

21 MS. GLAVIN: -- but I'm tired of people --

22 THE COURT: -- I think you heard me channel some of  
23 your arguments to Ms. Perry today as to why these documents  
24 are relevant and why we are here. If I thought that they were  
25 irrelevant, we would have quashed the subpoenas already.

1 MS. GLAVIN: Thank you, Your Honor.

2 THE COURT: I understand your arguments. We're  
3 trying to narrow because my concern at this juncture is  
4 proportionality and many of your requests are seeking relevant  
5 documents, but we've got to keep focused on the task at hand  
6 so that we can get the documents flowing and we can get these  
7 depositions started.

8 So, please --

9 MS. GLAVIN: Judge?

10 THE COURT: -- going forward, we'll all use the term  
11 "complainants." It's a fair point, Ms. Glavin. Please do not  
12 in any way use my reflexive vocabulary as evidence of what I  
13 view the facts of this case to be. Everyone is entitled to  
14 make their case and posit their defenses and I fully get that.

15 MS. GLAVIN: Judge?

16 THE COURT: Yes.

17 MS. GLAVIN: Thank you.

18 THE COURT: You need a break?

19 MS. GLAVIN: I was going to say thank you and I do  
20 need to use the restroom.

21 THE COURT: I can tell by your face.

22 MS. GLAVIN: Okay.

23 THE COURT: All right. We're going to take five  
24 minutes.

25 (Recess taken.) (Continued on next page.)

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1 (Continuing)

2 THE COURT: You may be seated.

3 We are going to go back on the record. And we were  
4 last talking about the executive chamber subpoena.

5 Ms. Glavin indicated they had complied with the  
6 subpoena in part except as to those categories relevant to Ms.  
7 Boylan. This led to the question of you standing to quash the  
8 subpoenas. We then started talking about personnel records.  
9 It's my understanding, Ms. Perry, she was an employee of the  
10 Empire State Development Corporation, not the executive  
11 chamber. Is that correct or incorrect?

12 MS. PERRY: That is my understanding.

13 THE COURT: So the personnel records arguments posed  
14 as to the Empire State Development Corporation, I understand.  
15 I also certainly understand your briefing with regard to your  
16 privacy interests related to these subpoenas. Some of the  
17 topics of the subpoenas in the executive chamber subpoena are  
18 somewhat duplicative with some of the other topics.

19 Just so I really understand what has been produced  
20 so far, Ms. Glavin, do you have the basics as to document  
21 requests one through three?

22 MR. GLAVIN: Let me just check.

23 THE COURT: And what about four?

24 MR. GLAVIN: So here's the thing: We are still  
25 reviewing, because the production was quite voluminous from



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1 the chamber. So we are still reviewing. But I think we got  
2 one and two. We need to go back with them. I think on three,  
3 I think we have some.

4 We are reviewing what we have because we just got  
5 these, I don't know, in the last month or so, and it is a lot.  
6 So we are going to go back with follow up to the chamber. I'm  
7 not sure that it is done or complete.

8 THE COURT: Okay. So it certainly seems as though  
9 -- as to Ms. Boylan's interest in the subpoena that item four  
10 as to her, which touches upon allegations of sexual  
11 harassment, other misconduct by Governor Cuomo, Ms. Perry, is  
12 there a genuine basis to seek to quash item 4B of the  
13 executive chamber subpoena?

14 MS. PERRY: Consistent with Your Honor's ruling with  
15 respect to the subpoena of Ms. Boylan, I guess not.

16 THE COURT: What they have does not impose a burden  
17 on Ms. Boylan.

18 MS. PERRY: I understand that.

19 THE COURT: They are in possession of statements  
20 that she made. I don't understand how that wouldn't be  
21 relevant.

22 MS. PERRY: Understood.

23 THE COURT: With regard to Subsection 4A of the  
24 overtime issues, can you just shed a little bit more light on  
25 the relevance of that, Ms. Glavin?

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1 MR. GLAVIN: That doesn't relate to Boylan, Your  
2 Honor.

3 THE COURT: That's just overtime scheduling?

4 MR. GLAVIN: That's not with respect to Ms. Boylan.  
5 It relates to two other complaints concerning times that they  
6 were working for the governor.

7 But just to be clear, the subpoena of the executive  
8 chamber, it is much broader than Lindsey Boylan.

9 THE COURT: All right. I understand. I'm trying to  
10 focus on the things that I perceived to be potentially related  
11 to Ms. Boylan. I wasn't sure if there was any overtime issues  
12 as to her, but it didn't make sense to me since I didn't she  
13 worked there. I just want to understand if there was a  
14 relevancy issue as to 4A.

15 MR. GLAVIN: No.

16 THE COURT: With regard to five, if they're in  
17 possession of documents, we have discussed at length the  
18 relevance of documents as to her relationship with Howard  
19 Zensky, as well as allegations of sexual harassment and other  
20 misconduct, comments by her as to whether Mr. Cuomo was  
21 handsome, things along those lines.

22 Ms. Perry, would you like to be heard on document  
23 request five?

24 MS. PERRY: I would just be repeating myself. I  
25 think it is all over the top and invasive, and, I mean, again,

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1 it's -- I would be repeating myself.

2 THE COURT: How is it invasive if it is in the  
3 possession of a state entity?

4 MS. PERRY: Well, because it relates to her privacy  
5 concerns.

6 THE COURT: If she was making references to Mr.  
7 Cuomo's conduct and the environment of the work at the  
8 executive chamber and all of these communications are  
9 occurring on government servers and devices, how is that  
10 invasive as to Ms. Boylan?

11 MS. PERRY: There are so many subcategories, I guess  
12 some of them are invasive and some of them aren't.

13 THE COURT: That's what I'm trying to untangle.

14 MS. PERRY: So the first one, with personal and/or  
15 sexual relationship with Mr. Zemsky of course is. The second  
16 one, allegation of sexual harassment, is not. With reference  
17 to his appearance, if she called him handsome, I suppose is  
18 not.

19 References to his conduct toward Ms. Boylan is not.

20 So I suppose it is just the first.

21 THE COURT: The first category?

22 MS. PERRY: Well, then we get into -- I mean, again,  
23 it is her kind of -- it is all mixed together, but then we get  
24 into her resignation, her efforts to -- you know, alleged  
25 efforts to keep her job, efforts to resign, and her meeting

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1 with Alphonso David, that's her personnel file. Both I and  
2 Mr. Licul have made arguments that's not appropriate.

3 THE COURT: So the first item and the last three  
4 sort of subsections are the main areas of concern for you?

5 MS. PERRY: Yes, Your Honor, beginning with her  
6 resignation.

7 THE COURT: Okay. And knowing that I know this is  
8 in your broad 12 brief and that I have read it carefully, is  
9 there anything that you would like to add as to this issue,  
10 Mr. Licul?

11 MR. LICUL: No, Your Honor.

12 THE COURT: Thank you. All right. So I understand  
13 the arguments there.

14 With regard to items 8 through 16, Ms. Glavin, 15 --  
15 I'm sorry, 15 appears to include images and videos and things  
16 along those lines. What is all that about?

17 MR. GLAVIN: Because these are -- they pertain to  
18 some other complainants to specific events.

19 THE COURT: Yes.

20 MR. GLAVIN: That are, like, for instance, December  
21 12, 2016, the fundraising event, that's where Kaitlin, you  
22 know, alleges first meeting the Governor.

23 THE COURT: Understood. Understood. So all of that  
24 stuff is -- I will just ask Ms. Perry, do you object to 15 at  
25 all?

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1 MS. PERRY: No, Your Honor.

2 THE COURT: All right. Now, moving right along,  
3 with regard to items 8, 9, 10, 11, 12, 13, 14, 15, 16. If you  
4 would like to add anything to your arguments. All comms of  
5 Governor Cuomo, it is very similar to what we've already  
6 discussed. No. 11. We can skip that. But 8, 9, 10, 11, 13,  
7 14, and 15, proportionality.

8 MR. GLAVIN: Yes. Your Honor, first of all, my  
9 guess is that there are not going to be a lot of documents in  
10 response to 10. But again, it goes to Ms. Boylan publicly  
11 telling the world this is why she left, and it wasn't true.  
12 Again, on 11, documents concerning her resignation, I think  
13 11, 12, and 13 are all the same thing pretty much.

14 THE COURT: 11 is different.

15 MR. GLAVIN: All concerning her resignation.

16 THE COURT: I'm sorry, yes, go ahead.

17 MR. GLAVIN: It's about the resignation.

18 THE COURT: Yes.

19 MR. GLAVIN: 12, 13, all of this relates to her  
20 resignation and what Ms. Boylan publicly said about it and  
21 what the truth was. My guess is there's not going to be a ton  
22 of documents. I sort of have some idea of what might be there  
23 in terms of e-mail correspondence about this and documenting  
24 Ms. Boylan's reach out. So she re-signed from State  
25 employment on September, I think it was the 26th, and then

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1 several days later reached out to Alphonso David to rescind  
2 her resignation. She reached out to the Governor's assistant  
3 asking to speak to him and have him call back. The Governor  
4 did not return Ms. Boylan's call after speaking with Alphonso  
5 David. But to the extent there are documents in the chamber,  
6 we want to get all of that.

7 THE COURT: All right. I understand the argument.

8 MR. GLAVIN: With respect to 14, again, my guess is  
9 that there may not be much, but there was a complaint lodged  
10 by somebody in ESD, and I think it went to Elizabeth Fine and  
11 then Ms. Fine gave it to Alphonso David. And on that score,  
12 we want to get that information about what led up to the  
13 meeting in January 2018 because we think that's one of the  
14 reasons that she left after being counseled. But it also goes  
15 to Ms. Boylan and Mr. Zemsky's relationship is also relevant  
16 to the extent Ms. Boylan says oh, my boss told me that the  
17 Governor had a crush on me. Well, her boss, if she's having  
18 an affair with her boss, there's alternative reasons for him  
19 to be saying that.

20 THE COURT: I understand the arguments about Mr.  
21 Zemsky, and I think we are getting pretty far afield as to  
22 him.

23 The ESD subpoena, which is included in Ms. Boylan's  
24 motion to quash at 88, it is much more narrowly tailored.  
25 88-5, much more narrowly tailored than many of the others.

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1 MR. GLAVIN: I'm sorry, we are on to?

2 THE COURT: The ESDC. As to items one through  
3 three, Ms. Perry, what is your position?

4 MS. PERRY: I think we now have some rulings where I  
5 think Your Honor is going. So I think the main objections are  
6 going to be to the later ones, which relate to, you know,  
7 their theories of the case about Mr. Zemsky and the personnel  
8 files and all of that. So those ones, if Your Honor can  
9 narrowly tailor them, you know, I don't think there is --

10 THE COURT: This is one through three?

11 MS. PERRY: Yes, Your Honor.

12 THE COURT: Ms. Glavin, is there a timeframe that's  
13 appropriate as to document requests one through three for the  
14 ESDC subpoena?

15 MR. GLAVIN: Your Honor, there is a time period in  
16 the definition, So if you go above the document request.

17 THE COURT: You're right. March 1, 2020 up until  
18 the date of the subpoena.

19 MR. GLAVIN: Yes. But we would like to serve the  
20 subpoena and engage with Empire State, because they may have  
21 ideas to narrow things as well or say they don't have things.

22 THE COURT: Understood.

23 MR. GLAVIN: I don't know what they've produced to  
24 the AG's office.

25 THE COURT: I understand. I do think that items one

1 through three are a good starting point. I'm less sold, as  
2 you've heard over the course of the afternoon, on the  
3 proportionality of some of these other categories, but I do  
4 see the relevance on proportionality at minimum to document  
5 requests one through three.

6 Four to nine, I'm a little bit less sold.

7 Is there anything in particular there, Ms. Glavin,  
8 that you would like to highlight?

9 MR. GLAVIN: Again, it goes to the circumstances of  
10 her leaving. We're aware -- I think there were a lot of  
11 communications about this, about the request to have her  
12 terminated. And actually Howard Zemsky, at least according to  
13 a memo that I have seen, Howard Zemsky is the one that  
14 approved Ms. Fine's request to terminate Ms. Boylan from the  
15 payroll. We do want to see the documents around that, about  
16 what the complaints were, because, again, it goes directly to  
17 Ms. Boylan telling the world repeatedly and to this day that's  
18 why she left the executive chamber and it's a lie.

19 THE COURT: I understand the argument.

20 Moving on to document request 10, you have sort of a  
21 numerous requests sort of mashed together, including  
22 allegations of sexual harassment, misconduct by Cuomo,  
23 references to Cuomo's appearance, references to Cuomo's  
24 conduct toward Boylan, et cetera, et cetera.

25 Ms. Perry, are there any specific items in 10 as to



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1 to which you would like to be heard further?

2 MR. GLAVIN: Judge, just so you know, this request  
3 matches the subpoena of the executive chamber, the last one we  
4 just went over.

5 THE COURT: I know. My very amazing law clerk put  
6 together this very detailed chart. We have matched them all  
7 up.

8 Is there anything specifically as to 10 that you  
9 would like to be heard more about?

10 MS. PERRY: Your Honor, it would just be the same  
11 issues that I took with the last one. I think really there  
12 would be just the last one, the January 2018 meeting with Mr.  
13 David. I think the rest of them, to be consistent, with what  
14 we've discussed, I think -- oh, I think the rest of them are  
15 okay.

16 THE COURT: Thank you. This one does have a time  
17 limit built in; correct, Ms. Glavin?

18 MR. GLAVIN: Yes, Your Honor.

19 THE COURT: So the very next subpoena included in  
20 Ms. Boylan's motion to quash pertains to the employee you just  
21 mentioned, Ms. Glavin, Elizabeth Fine. We haven't spoken  
22 about her much in the past. She comes up from time to time in  
23 the briefing. Some of the issues here again relate to the  
24 sexual relationship involving Mr. Zemsky, informal complaints  
25 regarding Boylan's conduct while she was employed, et cetera.

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1           Is there anything that you would like to add, Ms.  
2 Glavin?

3           MR. GLAVIN: The subpoena to Ms. Fine, it's only to  
4 the extent that has documents in her personal possession that  
5 aren't covered by the ESD subpoena. I will say that, because  
6 we do think Ms. Fine is a material witness to, one, the  
7 request to terminate Ms. Boylan; two, to Ms. Boylan's -- the  
8 fact that she was having an affair with her boss ESD and  
9 issues that that caused.

10           I will tell the Court that we did serve Ms. Fine in  
11 Bennett case and she came back -- her lawyer said she didn't  
12 have responsive documents, because we were only seeking if she  
13 had them in her personal possession.

14           THE COURT: Ms. Perry, I understand your arguments  
15 with regard to the Zemsky situation. Is there anything you  
16 would like to say in response to Ms. Glavin's remarks?

17           MS. PERRY: It sounds like it may not be an issue.  
18 We take exception both to the Zemsky documents and also to the  
19 employment documents. So I think that would cover the entire  
20 of the documents that they're seeking from Ms. Fine. So we  
21 would object to this subpoena in its entirety.

22           THE COURT: Okay. Thank you. All right. So the  
23 related motion to your motion to quash, at least related in my  
24 mind, Ms. Perry, relates to Mr. Cuomo's motion filed at ECF  
25 177, which was the motion filed by Ms. Trzaskoma, I believe,

1 regarding the issue as to whether or not there was some sort  
2 of an accommodation with the Attorney General's Office and  
3 requesting the Court direct you, Ms. Perry, to confirm whether  
4 Ms. Boylan and the OAG, in fact, had some sort of agreement to  
5 limit her production to 25 pages and to state the terms of any  
6 such agreement.

7           Whether or not there was an agreement between Ms.  
8 Boylan and the Attorney General's Office as to the scope of  
9 production really does seem somewhat irrelevant, but I would  
10 like you to have an opportunity to be heard on the response to  
11 their request, Ms. Perry.

12           MS. PERRY: I guess that's my response, I think that  
13 it's completely irrelevant what agreement Ms. Boylan's  
14 previous counsel worked out with the Attorney General's  
15 Office. Obviously it was to the satisfaction of the Attorney  
16 General's Office. So I don't see what -- they are seeking  
17 documents now. Your Honor is ruling on that now. So I really  
18 don't see how that has anything to do with the issues in this  
19 case at this point.

20           THE COURT: To your knowledge, Ms. Perry, is there  
21 any contemporaneous documentation or memorialization of any  
22 such agreement or do you have a different understanding as to  
23 what happened vis-à-vis the back and forth between Ms. Boylan  
24 and the AG's office investigators?

25           MS. PERRY: My understanding is there's not any

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1 written communication about that.

2 THE COURT: Okay. Ms. Trzaskoma, what I was sort  
3 of, or Ms. Glavin, whoever is addressing this one, I wasn't  
4 sure what to make of it, because I don't know that you're  
5 going to find a written agreement. Even if you did, I don't  
6 know what probative value that would truly have in this case  
7 where the issues are different and we are making more granular  
8 rulings as to the subpoenas that exist now.

9 MS. TRZASKOMA: Your Honor, just a couple of points.  
10 We submitted that letter after the prior conference where Ms.  
11 Perry made that representation about the existence of an  
12 accommodation. That was in the context of an argument on  
13 behalf of Ms. Boylan that we should just accept that whatever  
14 was good for the AG should be good enough for us. And our  
15 point was the AG subpoena was very broad, broader than our  
16 subpoena, and that we don't know why it is or how it came to  
17 be that Ms. Boylan produced only 25 pages of documents given  
18 that, according to Ms. Boylan, she has 550,000 potentially  
19 relevant communications or documents. So that was really in  
20 response that. But I think it does go, Your Honor, to a  
21 broader point. Again, it might not be relevant had Trooper 1's  
22 complaint not -- you know, if she weren't relying on the  
23 Attorney General's report. But if the argument is this was,  
24 you know, and the allegation is by Trooper 1, the AG's  
25 investigation was exhaustive and it was independent. If there

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1 were no accommodations -- so those are two things: One, did  
2 the AG stand down on its subpoena at the request of Ms. Boylan  
3 for, you know, a particular reason, and did the AG not seek  
4 documents that could have gone to her credibility, for  
5 example, we would like to know that.

6 THE COURT: It sounds like a deposition topic, not a  
7 document subpoena.

8 MS. TRZASKOMA: Well, it goes -- there was a  
9 representation made to Your Honor about the existence of an  
10 accommodation. I think that has been walked back somewhat,  
11 that there was -- now what I have heard is that the AG was  
12 satisfied. I don't actually know that the AG was satisfied.

13 THE COURT: And you never will.

14 MS. TRZASKOMA: Well, I don't know that.

15 THE COURT: You're never going to get to depose Joon  
16 Kim.

17 MS. TRZASKOMA: Your Honor, we obviously don't know  
18 and maybe the answer will be clear from the communications  
19 that Ms. Boylan produces between Ms. Boylan's counsel, who was  
20 not Ms. Perry, but Ms. Boylan's counsel and the AG  
21 investigators about Ms. Boylan's production. I don't know. I  
22 mean, in a normal --

23 THE COURT: This is the problem: This is a fishing  
24 expedition. There's nothing before me to suggest that there's  
25 a document that would answer this question that can be

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1 produced that is even -- that is sufficiently relevant to make  
2 the fishing expedition proportional.

3 MS. TRZASKOMA: Well, Your Honor, I don't think it  
4 is a fishing expedition.

5 THE COURT: It's irrelevant.

6 MS. TRZASKOMA: Well, it --

7 THE COURT: The jury will never know or care if the  
8 Attorney General's Office had an accommodation. I understand  
9 how this could be relevant to your arguments to preclude the  
10 Attorney General report, but I don't know that Ms. Boylan is  
11 the tree to be barking up for this issue.

12 MS. GLAVIN: Might I just have one moment with  
13 counsel.

14 (Pause.)

15 MS. TRZASKOMA: Well, putting aside what the jury is  
16 going to hear, I don't think any of us in this courtroom know  
17 right now what evidence will be in front of the jury.

18 THE COURT: And you certainly may cross her on this  
19 topic: Didn't you get this broad subpoena from the AG and you  
20 gave them this paltry production. Like that I could see  
21 happening easily.

22 MS. TRZASKOMA: But if Ms. Boylan's response is what  
23 the response was in this courtroom, which is yes, I had an  
24 accommodation from the Attorney General's Office, I would like  
25 to have in hand any documentation concerning any such alleged

1 accommodation. Again, it may be there is none, but if Ms.  
2 Boylan deliberately withheld communications with other  
3 complainants that were called for by the AG's subpoena -- and  
4 we've seen some of them. I mean, as Ms. Glavin referenced, we  
5 now have productions of documents from Ms. Bennett, the  
6 Bennett case.

7 THE COURT: I understand. I certainly think this is  
8 a ripe area for cross. I just don't know what you expect them  
9 to produce.

10 Ms. Perry, I'm really at a loss here, because I do  
11 understand the arguments that Mr. Cuomo is posing, and yes,  
12 there was representation made to the Court that there was some  
13 sort of an accommodation.

14 How did you arrive at that understanding?

15 MS. PERRY: It was just by the fact that she had  
16 been represented during the process that she had gotten a  
17 subpoena, that she had made this production and that she had  
18 continued down this process and that there had been no  
19 concern, no questions, no problems. So my understanding had  
20 been they had been satisfied and that had been an  
21 accommodation and understanding that had been reached between  
22 the AG's office and counsel.

23 THE COURT: At this juncture, I just don't I think  
24 there is sufficient information for the Court to conclude that  
25 there's some evidence that is producible with regard to this

1 issue at this time. Should circumstances change, for example,  
2 following Ms. Boylan's deposition, where something comes to  
3 light, that there were communications with her counsel and the  
4 Attorney General investigators on this topic or something  
5 along those lines, perhaps my view will be changed. But it  
6 seems to be to have been an evolution in Ms. Boylan's  
7 understanding as to the expectation and the Attorney  
8 General's, in your view, failure to follow up. I don't know.  
9 Unless there's something more presented as to what may exist,  
10 I don't know who to order to produce what.

11 MS. TRZASKOMA: Your Honor, going back, the  
12 subpoena, as Ms. Glavin indicated, the subpoena to Ms. Boylan  
13 includes her agents and documents in her custody and control,  
14 which we believe includes documents in her attorneys's custody  
15 and control and --

16 THE COURT: We are not getting into attorney-client  
17 communications.

18 MS. TRZASKOMA: We definitely have not asked for  
19 that, Your Honor. What we talked about with respect to the  
20 subpoena to Ms. Boylan is communications on Ms. Boylan's  
21 behalf by her lawyers with the AG's investigators. I don't  
22 want the communications between her lawyer and her. I want  
23 the communications with the AG's investigators about Ms.  
24 Boylan's compliance with the subpoena and whether Ms. Boylan  
25 represented, for example, that this is everything, there's



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1 nothing else.

2 And if the Attorney General's office followed up in  
3 any way, if she promised we're going to get you a certificate  
4 of compliance, which she never did. I don't know what  
5 communications there are. But that would certainly be  
6 encompassed in the subpoena to her and in particular the  
7 subpoena to Ms. Boylan, and in particular, the document  
8 requests that calls for materials related to the AG's  
9 investigation.

10 THE COURT: How is this proportional?

11 MS. TRZASKOMA: Your Honor, first of all, I don't  
12 know if it exists. But it is absolutely not a burden to seek  
13 that information.

14 THE COURT: Burden is not a question of  
15 proportionality. My question is whether this is proportional  
16 to the needs of the case?

17 MS. TRZASKOMA: It is, Your Honor. Trooper 1 is  
18 planning to rely on the Attorney General report. And she is  
19 saying it is exhaustive. It was not exhaustive, and we are  
20 entitled to prove that. And the way we are going to prove  
21 that is by showing that the Attorney General, for one of the  
22 key complainants in this case, failed to -- accepted a 25-page  
23 production from someone who told them under oath that she had  
24 been communicating with many other people about her  
25 allegations. So that's a very critical issue in terms of is

1 it exhaustive.

2 THE COURT: Then you depose her and information  
3 comes to light that there may be a record of this so-called  
4 accommodation that could change the analysis. But at this  
5 juncture, Ms. Trzaskoma, I don't know that there's sufficient  
6 information to know whether this information even exists, as  
7 you have conceded.

8 MS. TRZASKOMA: But that's the problem here, Your  
9 Honor. It's not a fishing expedition. We have been put in  
10 this position where we are defending a subpoena on burden and  
11 proportionality ground, and we don't even know do these  
12 documents exist.

13 THE COURT: There's no subpoena. This is a letter  
14 requesting the Court to direct her counsel to do work,  
15 essentially. And I don't have a good-faith record. I'm not  
16 saying you're not acting in good faith, but I don't have a  
17 record that this information exists.

18 Ms. Perry has explained the basis for her in-court  
19 representation and I am satisfied by it. I understand why she  
20 would have drawn that conclusion. Perhaps her word choice was  
21 not exactly what she would have said had she known it would  
22 have been scrutinized to this degree. But at this juncture,  
23 Ms. Trzaskoma, I don't think I'm going to be directing her  
24 counsel to do this; it's not proportionate.

25 MS. TRZASKOMA: To the extent Your Honor is

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1 construing that letter as anything other than a request that  
2 the record before this Court be corrected in terms of whether  
3 there was or was not an accommodation, that's all we were  
4 asking for in -- that's all we were asking for, is for the  
5 record to be cleared up, because the argument before Your  
6 Honor was we made this production to the AG, the AG was  
7 satisfied by it, and they should be too, it's enough.

8 THE COURT: And I don't actually care whether the AG  
9 was satisfied by it because the issues in this case are  
10 different and the subpoenas before me are specific, and I'm  
11 trying to reach a discovery process that could maybe  
12 eventually yield evidence in this case.

13 MS. TRZASKOMA: I guess this is my point, Your  
14 Honor, to the extent you were construing that as separate and  
15 apart from the subpoena to Ms. Boylan herself, I believe that  
16 Your Honor's questioning of Ms. Perry on this clears up the  
17 record that there was no like clear accommodation. So we will  
18 just proceed with the subpoena to Ms. Boylan according to Your  
19 Honor's order today.

20 THE COURT: Okay. It might not be t day. It is  
21 already 4:50.

22 MS. TRZASKOMA: Eventual.

23 THE COURT: Thank you for that clarification. I do  
24 appreciate it.

25 I know that the Bennett people are here and you have

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1 been very patient. I apologize that this has been taking so  
2 long. I should have put you first. Your subpoenas are much  
3 shorter. Had we thought that through back in December, we  
4 would have put you first. My apologies for that. I wasn't  
5 actually expecting you to come at the beginning of the  
6 proceedings, Mr. Eisenberg.

7 Lindsey for New York is the topic of Trooper 1's  
8 motion, subpoena at docket ECF 82-7. I don't think that this  
9 was a topic within your motion to quash, Ms. Perry; is that  
10 correct?

11 MS. PERRY: It is a little muddled for me, Your  
12 Honor, but I think that's correct.

13 THE COURT: Mr. Licul, I fail to see how this  
14 presents a concrete Rule 412 issue. Would you like to be  
15 heard on that as to request number one? I'm talking about the  
16 lack of Rule 412 issue with respect to request number one.  
17 The basis for your motion, Mr. Licul, was Rule 412.

18 Does that argument attend to every subsection of the  
19 document requests or to some?

20 MR. LICUL: It does to the extent the information  
21 sought is about a relationship. That's it. I agree with Your  
22 Honor. I don't construe one as asking for that, but that's  
23 all. It is sort of a carveout argument.

24 THE COURT: I see.

25 MR. LICUL: The subpoena should be quashed to the

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1 extent it is asking for this category.

2 THE COURT: All right. I appreciate that.

3 Is there anything you would like to say in response  
4 to this issue, Ms. Glavin?

5 MS. GLAVIN: On the Lindsey for New York?

6 THE COURT: Correct. 82-7.

7 MS. GLAVIN: In respect to this, I mean, I don't  
8 think Mr. Zemsky is mentioned on the 412 issue. The reason we  
9 are asking for it is because we understand there were  
10 communications --

11 THE COURT: The entire motion is based on 412.

12 MS. GLAVIN: Done. Go.

13 THE COURT: So do you have anything you would like  
14 to say?

15 MS. GLAVIN: On the 412?

16 THE COURT: Yes.

17 MS. GLAVIN: No, because I don't think this is a 412  
18 issue.

19 MS. PERRY: Your Honor, just to be cleared, I think  
20 this one maybe postdated our motions, so we didn't want to  
21 duplicate previous motions. But we stand on our arguments.  
22 We have the same arguments for this that we did for everything  
23 else. So we would ask that Your Honor rule consistently, of  
24 course, on this one as we have with the same privacy interests  
25 and therefore the same -- I think the same standing arguments

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1 as we do with respect to the other additional nonparty  
2 subpoenas. So we would just have the same -- you know, I  
3 would rest on those arguments.

4 THE COURT: All right. Understand.

5 MS. PERRY: Thank you.

6 THE COURT: The question for you, Ms. Glavin, is  
7 there a timeframe as to this subpoena?

8 MS. GLAVIN: Yes. This could be limited. To the  
9 extent it is her campaign, it's during the campaign. So it  
10 would be covered by -- she announced in November, I think  
11 mid-November of 2020 is when she announced, and I think -- I'm  
12 trying to think when the election was. But it is necessarily  
13 limited by the length of the campaign. The election was in  
14 2021. So it covers late 2020 to 2021.

15 THE COURT: The Verizon subpoenas, do you want to  
16 confirm whose phone number this is? This is document 82-9,  
17 Ms. Glavin.

18 MS. GLAVIN: I'm sorry, one second.

19 (Pause.)

20 MS. GLAVIN: Your Honor, the last point, the primary  
21 was June 2021, so it is necessarily limited from November 2020  
22 to June 2020.

23 THE COURT: Okay. Thank you.

24 MS. GLAVIN: Yes.

25 THE COURT: So this too, this phone records subpoena

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1 was included in Mr. Licul's motion to quash to the extent that  
2 it implicated Rule 412 issues, but since it is phone records,  
3 it's hard for the Court to see how Rule 412 would be  
4 implicated.

5 Mr. Licul, would you like to be heard on that?

6 MR. LICUL: Yes, Your Honor. I think that -- not to  
7 bring back something that happened a week ago, but when we are  
8 talking about phone records, I think we outlined there that  
9 the courts do not just turn over phone records because people  
10 want to see whose talking to whom. We interpreted this under  
11 412 that they are asking for phone records concerning Ms.  
12 Boylan's communications with Mr. Zemsky as it relates to some  
13 allegation that she and Mr. Zemsky had a relationship.

14 THE COURT: Well, the dates of this doesn't  
15 necessarily line up there as far as I understand the history,  
16 Ms. Glavin will correct me if I am wrong.

17 MS. GLAVIN: No, I think that's it. I don't know  
18 that they had a relationship after Ms. Boylan left ESD in  
19 2018. What this would cover with Mr. Zemsky is that when she  
20 threatened him in February of 2021, if there are phone calls  
21 around that, or if she spoke with Mr. Zemsky after the release  
22 of his testimony and after it was made public that he had told  
23 the Attorney General's Office that he was disputing what Ms.  
24 Boylan said in her testimony, did she have communications with  
25 him.

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1 But on the 412 issue, I just don't see how it's  
2 implicated.

3 THE COURT: All right. I understand.

4 Ms. Perry.

5 MS. PERRY: But it would also cover all the calls  
6 she made to her husband, to her trauma therapist, to her  
7 daughter, to every other person that she has called, it is the  
8 most overreaching, excessive subpoena that I can possibly  
9 imagine to try to get to something that again is so far afield  
10 that I barely know how to even make this argument.

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12 (Continued on next page.)

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1 THE COURT: Well, the situation as currently posed  
2 is, you know, Mr. Licul had raised the issue before the court.  
3 I don't believe that it was included in your motion. I  
4 understand the timing concerns and your legitimate concern --

5 MS. PERRY: Yes.

6 THE COURT: -- about, you know, piling on to the  
7 motions that were already pending before the court and I  
8 appreciate that, but I also left without briefing from you as  
9 to this topic. I'm not necessarily inviting it. If you'd  
10 like to just make some arguments now.

11 MS. PERRY: Yes. Right. They had come in. I think  
12 we made arguments only with respect to four additional  
13 non-party subpoenas and I think these and this one and three  
14 others, I guess, came in after we didn't have the opportunity  
15 to, and then since then, of course, a number of others have  
16 come in.

17 THE COURT: Right.

18 MS. PERRY: So you can anticipate our arguments at  
19 this point. I fear I'm becoming very repetitive.

20 THE COURT: So, Ms. Glavin, your purposes of this  
21 subpoena from your perspective were to, in an effort to pin  
22 down this communication to Mr. Zemsky that you're  
23 characterizing as a threat?

24 MS. GLAVIN: Yes, but there's more for the purposes  
25 of the subpoena.

1           So it's meant to cover Ms. Boylan's reach-out that  
2 she has testified about. So it's meant to see who she was  
3 calling in December 2020. It's also meant to cover who she  
4 was communicating with before and after she spoke with the  
5 AG's Office as well as other witnesses because we know they  
6 were communicating about it.

7           I mean I know from Ms. Hinton's production that, you  
8 know, there was a back and forth about, you know, whether or  
9 not, did you tell the interviewers about Melissa and the  
10 Governor, that type of thing.

11           We want to see was she calling people after they  
12 went in and testified to get information or people getting  
13 their stories straight. So we're very interested in that and  
14 we're particularly interested in the calls around  
15 December 2020, January, March, as she was calling people and  
16 texting people.

17           THE COURT: So this is the situation with the phone  
18 subpoena as I see it, Ms. Perry.

19           Similar to the phone subpoena that we had discussed  
20 at length vis-à-vis Trooper 1, there may be certain evidence  
21 of communications as to particular people and particular time  
22 frames that I think could potentially be relevant and  
23 proportional to the case. The problem is nobody knows until  
24 they actually look at the phone records.

25           To that extent, in the Trooper 1 main case, the

1 party discovery, the phone records are now in the case, sort  
2 of. Ms. Glavin had obtained them from the phone company  
3 directly through subpoena through the Bennett case and what we  
4 had discussed was having Mr. Licul review them first to redact  
5 communications with therapists and doctors and others  
6 unrelated to any claims of emotional distress. Obviously, as  
7 a non-party, that would not be all of her treatment providers  
8 there has been. Her children, you know, personal close  
9 relationships I don't think would even be remotely relevant.

10 What I think could be relevant, I'm not saying it is  
11 necessarily since I have no idea what's in the records, is  
12 evidence to corroborate text messages, cellular communications  
13 regarding communications with other complainants. I don't  
14 know because I don't know what the phone records include.

15 So although notwithstanding my prior comment that  
16 the meet-and-confers had not been particularly productive in  
17 this case, I think this is one of those rare instances where  
18 the parties really need to drill down on whether or not there  
19 is some accommodation that could be reached, both with regard  
20 to date range and the numbers and/or individuals as to whom  
21 the records are truly being sought, because I agree with  
22 Ms. Perry that all phone records for a three year period is  
23 very, very broad and not proportional given her status as a  
24 non-party.

25 MS. GLAVIN: Okay.

1 THE COURT: So on that one, you guys are going to  
2 need to meet and confer.

3 MS. PERRY: Your Honor, may I just ask --

4 MS. GLAVIN: I can't wait.

5 MS. PERRY: -- with respect to the other cell phone  
6 records, was that just for the plaintiff or were there third  
7 parties?

8 THE COURT: This is the first one other than the  
9 plaintiff where there's been -- that I have before me. It  
10 doesn't mean that hasn't been sent to Verizon. I just don't  
11 know about it. I don't know.

12 MS. PERRY: I mean I can only imagine how I would  
13 feel if someone subpoenaed all my cell phone records as a  
14 non-party. It just feels so incredibly invasive. But, of  
15 course --

16 THE COURT: I'm not directing them to be produced at  
17 this juncture, Ms. Perry.

18 MS. PERRY: Yes.

19 THE COURT: I'm trying to figure out if there's a  
20 way to limit it.

21 If, for example, Ms. Boylan is able to get her call  
22 detail herself, some people have that capacity depending on  
23 their carrier, there may be certain date ranges with certain  
24 groups of individuals with whom she was in contact would be  
25 sufficient given what Ms. Glavin just described as the purpose

1 of this subpoena which is to track down the alleged threats to  
2 Mr. Zemsky, communications regarding the so-called reach-out  
3 to other complainants.

4 MS. PERRY: But she's speaking with other  
5 complainants. We've talked about this. She had a network, a  
6 support network. So she reached out to people. So what does  
7 that tell them? They know she was talking to them.

8 THE COURT: I need you to meet and confer about it.

9 MS. PERRY: Yes, Your Honor. We'll do that.

10 THE COURT: Okay. Cade Leebron. Again, this  
11 subpoena was raised in Mr. Licul's papers.

12 To the extent that it implicates Rule 412 issues,  
13 Mr. Licul, is there anything else you would like to say about  
14 it?

15 MR. LICUL: No, the same thing that I said about the  
16 other subpoenas.

17 THE COURT: Okay. Ms. Perry, would you like to say  
18 anything?

19 MS. PERRY: Nothing more than what I've said  
20 already.

21 THE COURT: Ms. Glavin?

22 MS. GLAVIN: Do you want to know who Cade Leebron is  
23 and why we subpoenaed her? I don't think it implicates a 412  
24 issue, but Cade Leebron was a paid consultant to Lindsey  
25 Boylan's campaign and she is a writer who focuses on writing

1 about sexual abuse and sexual violence and we think that she  
2 played a role in the drafting and framing of the essay, the  
3 Boylan essay. There was a payment to her.

4 So we want any communications dealing with that  
5 essay or dealing, you know, sort of with messaging for  
6 Ms. Boylan's campaign as it related to her, to her allegations  
7 of sexual harassment.

8 THE COURT: Is there anything you would like to say  
9 in response, Ms. Perry?

10 MS. PERRY: No, Your Honor.

11 THE COURT: Okay.

12 MS. PERRY: The only thing that I would say is, I  
13 think there's one more perhaps that's in front of Your Honor,  
14 but as I've mentioned quite a few times now, there are many,  
15 many others that Your Honor is not yet aware of. So I mean I  
16 gather we will get an order from Your Honor that hopefully  
17 will give the parties some guidance, I'm sure it will, and  
18 then I imagine Your Honor will require the parties to meet and  
19 confer then with respect to the other subpoenas perhaps and  
20 then we can hopefully not be in front of Your Honor again.

21 THE COURT: I mean, ideally, if you are able to meet  
22 and confer and work out any kind of accommodation on the basis  
23 of your divination of sort of where I might go with regard to  
24 these issues, I would encourage you to do so.

25 To the extent you cannot reach agreement, I strongly

1 encourage you to utilize the joint letter protocol that would  
2 bring both sides' arguments to the court at the same time  
3 because one of the sources of delay was a lot of these motions  
4 going back and forth without any pre-motion schedule or  
5 anything. It's like waiting to hear what the other side has  
6 to say takes time and then to have replies and all the  
7 briefing itself just takes weeks and weeks. So my individual  
8 rules lay out a framework for providing joint letters and it's  
9 much more efficient.

10 So I would prefer to proceed in that fashion if you  
11 do take issue you with some of the other third-party subpoenas  
12 touching upon your client's privacy concerns and that if you  
13 can't reach an accommodation, to proceed in that fashion.

14 All right. So that covers my questions with regard  
15 to the Boylan issues.

16 Ms. Bennett's issues, as I noted before, are far  
17 fewer. I really do apologize to the Bennett folks and thank  
18 you for your patience.

19 Is there anything you would like to say before we  
20 close out the Ms. Boylan conference, Ms. Perry?

21 MS. PERRY: May I speak Mr. Licul for one moment?

22 THE COURT: Yes.

23 (Pause.)

24 THE COURT: Ms. Perry, yes?

25 MS. PERRY: Your Honor, just in terms of trying to

1 narrow the scope and ease the burden a little bit, we had  
2 talked a little bit about time frame and we talked about  
3 ending the time frame for searching for documents with a date  
4 of issuance of the subpoena.

5 In speaking with counsel, I actually think it  
6 probably makes more sense and I hope counsel, I hope counsel  
7 will agree, the date that the AJC report which I guess was the  
8 second one seems to me a logical point in time to end our  
9 search. I don't think there's really anything that really  
10 comes after that or maybe a short time after that, but I think  
11 if we continue it in time until the date of issuance, there's  
12 not going to be a lot that goes on after that. I really think  
13 that should be what they're looking for, but I see some  
14 shaking of heads so I'm probably being overly optimistic.

15 THE COURT: That may work with regard to the items  
16 framed around the OAG investigation and the AJC investigation  
17 but communications amongst the complainants, I think, is  
18 probably a different issue but I will let Ms. Glavin speak for  
19 herself.

20 MS. GLAVIN: Yes. No, it doesn't work because the  
21 Assembly report comes out in November, I think November 22nd  
22 of 2021. Ms. Boylan becomes, should have become publicly  
23 aware in January of 20, January, February of 2022 that Howard  
24 Zemsky told the Attorney General's Office something very  
25 different than what Ms. Boylan told the Attorney General's



1 Office and so I'm sure she had a reaction to that and  
2 Ms. Boylan is a prolific communicator on social media and  
3 electronically and I'm sure she had things to say about that.

4 It also goes to -- we want to cover the release of  
5 transcripts. I think the -- I can't remember when the Zensky  
6 transcript was released, but I think it was released after the  
7 Assembly report came out.

8 We also want to cover Trooper 1 filed her lawsuit in  
9 February of 2022. That had, you know, Ms. Boylan named 36  
10 times on that. We want to capture her communications around  
11 that lawsuit and around, you know, when we made very clear  
12 that we were going to be subpoenaing complainants and we know  
13 she was speaking with complainants about it.

14 We also want to capture her communications because  
15 she began going to the press. She went to the Wall Street  
16 Journal in the spring of last year when she got a subpoena.  
17 This is the person who wants to keep her privacy but she runs  
18 to the Wall Street Journal to tell them she got a subpoena and  
19 she gets Ana Liss to confirm it to the Wall Street Journal as  
20 well.

21 MS. PERRY: How is that relevant?

22 MS. GLAVIN: That's after the subpoena.

23 MS. PERRY: So perhaps the date that Trooper 1 filed  
24 the complaint.

25 I mean her telling the Wall Street Journal that she

1 got a subpoena, how is that -- I mean, that's not -- I mean we  
2 could go on forever then, why not until today. I mean I think  
3 the date of this -- I take the point about, you know, the  
4 filing of the reports coming out, but I just think we can go  
5 on forever.

6 I think the date that this complaint was filed, why  
7 shouldn't that be the logical conclusion?

8 MS. GLAVIN: The complaint was filed in February of  
9 2022. We know Ms. Boylan gets her subpoena in March of 2023.  
10 She then sends some horribly vile texts about Melissa DeRosa  
11 to Ana Liss and Ana Liss actually, after the subpoenas go out,  
12 and Ana Liss actually thought during her testimony that, it  
13 occurred to her, is Lindsey sending me these texts so I have  
14 to, because she knows they're going to get produced because  
15 she wanted to send a message.

16 I also think it becomes very relevant --

17 THE COURT: What were the date of those texts?

18 MS. GLAVIN: They were April of 2023.

19 MS. PERRY: Your Honor, it's just diminishing  
20 returns at some point. And, again, viewed against  
21 proportionality and burden, I mean it's more of the same and  
22 they have this stuff. So if they really want to know about  
23 her allegations of sexual harassment and retaliation, then  
24 they're going to get that in the time frame that they're  
25 looking for until the date that this complaint was filed.

1 MS. GLAVIN: There's one other thing too. From the  
2 Bennett discovery, we also have indications that Lindsey  
3 Boylan may be writing a book. So to the extent she's talking  
4 about those allegations and she has drafts of that within the  
5 last, you know, since she got the subpoena, of course we want  
6 that, of course we want to see that.

7 THE COURT: Is that subject to a subpoena right now?

8 MS. GLAVIN: If she began writing the book as of the  
9 date of the subpoena, March 2023, yes.

10 THE COURT: The subpoena -- we've been talking about  
11 the subpoena date range closing at the date of the subpoena.

12 MS. GLAVIN: Uh-huh, and that's the range, to March  
13 of 2023.

14 THE COURT: I thought you said she was writing the  
15 book after she got the subpoena.

16 MS. GLAVIN: Oh, no. I thought it was actually  
17 before.

18 MR. LICUL: Your Honor, I think if we're going to go  
19 down this road, Ms. DeRosa wrote a book. And Ms. DeRosa, I  
20 asked her during her deposition about it, about certain  
21 things, and she refused to answer questions.

22 If we're going to go down the road -- I don't mean  
23 this as a tit-for-tat. I just mean it as a perspective. If  
24 we're going to go down the road did you write a book, were you  
25 thinking about writing a book, this is going to go on forever.

1 I mean this is so far afield, I can't even follow how this is  
2 at all relevant.

3 If the argument is Ms. Boylan is not telling the  
4 truth, they have her sworn testimony, they have what she  
5 produced to the AG's Office, they'll get some other stuff, but  
6 whether she spoke to somebody else, whether she's writing a  
7 book, I mean, at this point, this is why women don't come  
8 forward.

9 THE COURT: I know.

10 MR. LICUL: This is why they don't. And the more we  
11 let this happen, the more -- it's just -- I think at one  
12 point, Your Honor mentioned in one of our prior hearings  
13 about, you know, sort of jumping down a rabbit hole and how  
14 many rabbit holes are we going to jump down. I mean we're  
15 down a lot of rabbit holes here. I just don't see how it's  
16 connected.

17 MS. GLAVIN: Can I just respond on this point?

18 THE COURT: I actually really don't want you to  
19 because Mr. Eisenberg and his team have been waiting for three  
20 hours and to reargue relevance now at 5:15, it really is kind  
21 of neither here nor there.

22 MS. GLAVIN: But, Judge --

23 THE COURT: We have been talking about these issues  
24 all afternoon. I understand both sides' positions. The whole  
25 goal of the day was to try to narrow things as much as

1 possible. I had many questions. Many of them have been  
2 answered. You know, we're going to go back and review all the  
3 details, some of the new details, some of the additional  
4 contacts that I was provided today and I'm going to make  
5 rulings. Discovery is a process. Discovery is messy and some  
6 of those rulings may or may not cover the dates that you think  
7 are relevant or they may be slightly overbroad and,  
8 unfortunately, that's how discovery works sometimes.

9 I don't know that putting this date limit is  
10 necessarily even in your best interests, Ms. Perry, because  
11 when something comes out of her deposition that brings it  
12 current, and they have post-EBT demands, you are going to be  
13 doing the same document search twice.

14 MS. PERRY: I'll take that risk.

15 THE COURT: And that's part of the problem. Right?

16 MS. PERRY: Yes.

17 THE COURT: I'm trying to maximize the time. I know  
18 this seems inefficient because it is inefficient, it feels  
19 inefficient, but at the same time, going in circles and doing  
20 the tiny baby steps and only giving this much and then giving  
21 this much and giving this much when a broader universe may be  
22 relevant and proportional and that's why I've been trying to  
23 focus on proportionality.

24 I fully recognize your status as a non-party.  
25 Unfortunately, she's squarely in this complaint, she's

1 squarely in the AG report, and the challenge to that AG report  
2 is squarely relevant to Mr. Cuomo's defenses. As Mr. Licul  
3 has pointed out, they may seek to call her even if he doesn't,  
4 if they take the same strategy as in the Bennett case.

5 MS. PERRY: There's no way. No way. We all know  
6 that.

7 MS. GLAVIN: I wouldn't be so sure, Ms. Perry. I  
8 would not be so sure.

9 MS. PERRY: I'm pretty sure. You want to make a  
10 gentlewoman's bet?

11 MS. GLAVIN: What?

12 MS. PERRY: We can make a gentlewoman's bet.

13 THE COURT: I hear you, I do, but I don't know --  
14 I've not yet heard a principled date limit other than the date  
15 of the subpoena that would necessarily be sufficient.

16 With regard to the communications with other  
17 complainants, I hear your concerns. I'm certainly not  
18 ordering that the entire universe of the communications she's  
19 had with other complainants be produced.

20 MS. PERRY: Thank you, Your Honor.

21 THE COURT: All right. With that, is there anything  
22 else you would like to add?

23 MS. PERRY: No.

24 THE COURT: Mr. Licul, anything on Ms. Boylan?

25 MR. LICUL: No, Your Honor.

1 THE COURT: Okay. Ms. Glavin, anything final on  
2 Ms. Boylan?

3 MS. GLAVIN: No, Your Honor.

4 THE COURT: Okay. Thank you.

5 MS. PERRY: Are we excused, Your Honor?

6 THE COURT: You are -- but wait, no, because of  
7 Ms. DeRosa's subpoena. My apologies. The DeRosa subpoena at  
8 154-1.

9 So this subpoena is more limited. This subpoena  
10 sought documents regarding communications with DeRosa as a  
11 party or about DeRosa as a party. You know, candidly, a lot  
12 of these documents do seem, you know, relevant and  
13 proportional if we can find appropriate date limitations.

14 Is there anything you would like to say with regard  
15 to the DeRosa subpoena, Ms. Perry?

16 MS. PERRY: Just one moment, Your Honor.

17 THE COURT: It's document, it's filed at  
18 Document 154-1, I believe, in the Trooper 1 case.

19 MS. CASSIDY: Your Honor, I think that may be the  
20 Bennett subpoena.

21 THE COURT: I'm sorry.

22 MS. CASSIDY: It is almost identical but there's --  
23 I don't believe there's anything on the docket about the  
24 Boylan subpoena because we've never completed the  
25 meet-and-confer.

1 MS. PERRY: We didn't meet and confer about this.

2 THE COURT: So am I just conflating my subpoenas?

3 MS. CASSIDY: That's okay.

4 THE COURT: Because you had raised it in the middle  
5 so I thought it was her.

6 MS. CASSIDY: We do have a subpoena outstanding to  
7 Ms. Boylan and to the extent that Ms. Boylan's counsel is  
8 going through the effort of searching documents, we suggest  
9 that it would be probably be most efficient to search for our  
10 request at the same time, but we agree that there is no issue  
11 that is ripe for the Court's adjudication at this point and I  
12 think that we can productively meet and confer about our  
13 subpoena based on the guidance from Your Honor today.

14 THE COURT: Okay. Thank you.

15 Do you concur in that, Ms. Perry?

16 MS. PERRY: Yes, I do, Your Honor.

17 THE COURT: Thank you. And you're absolutely right.  
18 In my notes, it's very clear that this 154-1 is Bennett, but  
19 not Ms. Boylan, but since you had raised it, I connected the  
20 two.

21 MS. CASSIDY: Thank you.

22 THE COURT: With that, we are done with Ms. Boylan  
23 and we'd ask the attorneys for Ms. Bennett to step forward.

24 (Matter concluded.)  
25